

**Regular Meeting of the Sandy Springs City Council was held Tuesday, December 15, 2009, at 6:00 p.m., Mayor Eva Galambos presiding.**

### **INVOCATION**

Paul Ferrarone, Apostles Lutheran Church offered the invocation.

### **CALL TO ORDER**

Mayor Galambos called the meeting to order at 6:00 p.m.

### **ROLL CALL AND GENERAL ANNOUNCEMENTS**

**City Clerk Michael Casey** reminded everyone to silence their cell phones and pagers at this time. Additionally, those wishing to provide public comments, either during a public hearing or before the conclusion of the meeting under the Public Comment section, are required to complete a public comment card. The cards are located at the back counter and need to be turned in to the Clerk.

City Clerk Casey called the roll.

**Mayor:** Mayor Eva Galambos

**Councilmember's Present:** Councilmember Doug MacGinnitie, Councilmember Dianne Fries, Councilmember Rusty Paul, Councilmember Ashley Jenkins, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnery.

### **PLEDGE OF ALLEGIANCE**

Mayor Galambos led the Pledge of Allegiance.

**(Agenda Item No. 09-303)**

### **APPROVAL OF MEETING AGENDA**

**Motion and Vote:** Councilmember Fries moved to approve the Meeting Agenda. Councilmember Jenkins seconded the motion. The motion carried unanimously.

### **CONSENT AGENDA**

**(Agenda Item No. 09-304)**

1. Approval of the City of Sandy Springs 2010 City Council Meeting Schedule  
*(Michael Casey, City Clerk)*

**(Agenda Item No. 09-305)**

2. A Resolution to Adopt the City of Sandy Springs 2010 Planning and Zoning Schedules  
*(Nancy Leathers, Community Development Director)*

**Resolution No. 2009-12-88**

**(Agenda Item No. 09-306)**

3. Resolution to approve the North Fulton Municipal Association's Resolution stating its opposition to the use of Fulton County General Fund Money on Social Service District operations and services such as transferring the net revenue generated from traffic citations issued by the Fulton County Police Department within the geographical boundaries of the South Fulton Special Services District to the South Fulton

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Special Services District Fund and authorize the Mayor to proceed to go forward with the Resolution's terms  
(*Eva Galambos, Mayor*)  
**Resolution No. 2009-12-89**

**Motion and Vote:** Councilmember Fries moved to approve the Consent Agenda. Councilmember Jenkins seconded the motion. The motion carried unanimously.

## **PRESENTATIONS**

1. Proclamation – Atlanta Jewish Film Festival

**Mayor Eva Galambos** presented a proclamation for the Atlanta Jewish Film Festival. The Atlanta Jewish Film Festival is the largest film festival in Atlanta, and the second largest Jewish Film Festival in the U.S. The Atlanta Jewish Film Festival showcases a collection of films that show life, culture, and history with a Jewish twist.

2. Presentation – Portrait of Mayor Eva Galambos

**City Attorney Wendell Willard** presented Mayor Galambos with a portrait completed by Kathy Williams. He stated that Mayor Galambos has guided Sandy Springs through a lot of turmoil for thirty five years, even though it has been an official City for only four years. He thanked the Mayor for her continued years of service.

## **PUBLIC HEARINGS**

### **Alcoholic Beverage Licenses**

#### **(Agenda Item No. 09-307)**

1. Approval of Alcoholic Beverage License Application for Bishoku at 5920 Roswell Rd, Bldg B, Suite 111, Sandy Springs, GA 30328. Applicant is Jackie Merkel for Consumption on Premises of Wine & Malt Beverage

**Director of Operations Wayne Wright** stated the application is for a new location for consumption on the premises of wine and malt beverage. Staff has reviewed the application and found it to be complete. The public hearing has been advertised appropriately. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Meinzen McEnery moved for Approval of Alcoholic Beverage License Application for Bishoku at 5920 Roswell Rd, Bldg B, Suite 111, Sandy Springs, GA 30328. Applicant is Jackie Merkel for Consumption on Premises of Wine & Malt Beverage. Councilmember Fries seconded the motion. The motion carried unanimously.

#### **(Agenda Item No. 09-308)**

2. Approval of Alcoholic Beverage License Application for Enzo Japanese Restaurant at 8540 Roswell Rd, Suite 800 Sandy Springs, GA 30350. Applicant is Jae-Sung Jung for Consumption on Premises of Malt Beverage

**Director of Operations Wayne Wright** stated the application is for a change of ownership. The Staff has reviewed the application and found that all of the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Fries moved for Approval of Alcoholic Beverage License Application for Enzo Japanese Restaurant at 8540 Roswell Rd, Suite 800 Sandy Springs, GA 30350. Applicant is Jae-Sung Jung for Consumption on Premises of Malt Beverage. Councilmember Jenkins seconded the motion. The motion carried unanimously.

**(Agenda Item No. 09-309)**

3. Approval of Alcoholic Beverage License Application for Food Mart #516-Shell at 7800 Holcomb Bridge Rd Sandy Springs, GA 30092. Applicant is Ramiz Wahib Mikhail for Retail/Package of Wine and Malt Beverage

**Director of Operations Wayne Wright** stated the application is for a change of ownership for retail package sale of wine and malt beverages. Staff has reviewed the application and found that all of the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Fries moved for Approval of Alcoholic Beverage License Application for Food Mart #516-Shell at 7800 Holcomb Bridge Rd Sandy Springs, GA 30092. Applicant is Ramiz Wahib Mikhail for Retail/Package of Wine and Malt Beverage. Councilmember Meinzen McEnery seconded the motion. The motion carried unanimously.

**(Agenda Item No. 09-310)**

4. Approval of Alcoholic Beverage License Application for Food Mart #521-Shell at 5640 Northside Dr Sandy Springs, GA 30328. Applicant is Mohd "F" Jarrar for Retail/Package Wine and Malt Beverage

**Director of Operations Wayne Wright** stated the application is for a change of ownership for retail package sale of wine and malt beverages. Staff has reviewed the application and found that all the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Meinzen McEnery moved for Approval of Alcoholic Beverage License Application for Food Mart #521-Shell at 5640 Northside Dr Sandy Springs, GA 30328. Applicant is Mohd "F" Jarrar for Retail/Package Wine and Malt Beverage. Councilmember Fries seconded the motion. The motion carried unanimously.

**(Agenda Item No. 09-311)**

5. Approval of Alcoholic Beverage License Application for Genki Noodles & Sushi at 5590 Roswell Rd, Suite 100, Sandy Springs, GA 30342. Applicant is Suzanne Zeising for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits

**Director of Operations Wayne Wright** stated the application is for a new restaurant location in the Prado, requesting retail sale of, or on premise consumption of beer, wine, and liquor. Staff has reviewed the application and found that all of the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

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**Motion and Vote:** Councilmember Meinzen McEnery moved for Approval of Alcoholic Beverage License Application for Genki Noodles & Sushi at 5590 Roswell Rd, Suite 100, Sandy Springs, GA 30342. Applicant is Suzanne Zeising for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits. Councilmember Fries seconded the motion. The motion carried unanimously.

**(Agenda Item No. 09-312)**

6. Approval of Alcoholic Beverage License Application for Locos Grill & Pub at 8550 Roswell Rd, Sandy Springs, GA 30350. Applicant is Lane Martin for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits

**Director of Operations Wayne Wright** stated the application is for a new restaurant requesting consumption of beer, wine, and liquor on premise. Staff has reviewed the application and found that all of the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Fries moved for Approval of Alcoholic Beverage License Application for Locos Grill & Pub at 8550 Roswell Rd, Sandy Springs, GA 30350. Applicant is Lane Martin for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits. Councilmember MacGinnitie seconded the motion. The motion carried unanimously.

**(Agenda Item No. 09-313)**

7. Approval of Alcoholic Beverage License Application for Taco Mac at 5600 Roswell Rd, Suite 3, Sandy Springs, GA 30342. Applicant is Joseph Ardagna for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits

**Director of Operations Wayne Wright** stated the application is for a new restaurant requesting consumption of beer, wine, and liquor on premise. Staff has reviewed the application and found that all of the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Fries moved for Approval of Alcoholic Beverage License Application for Taco Mac at 5600 Roswell Rd, Suite 3, Sandy Springs, GA 30342. Applicant is Joseph Ardagna for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits. Councilmember Meinzen McEnery seconded the motion. The motion carried unanimously.

**(Agenda Item No. 09-314)**

8. Approval of Alcoholic Beverage License Application for Uncle Julio's at 1140 Hammond Dr, Bldg K, Suite 100, Sandy Springs, GA 30328. Applicant is Marina Saffel for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits

**Director of Operations Wayne Wright** stated the application is for a new restaurant requesting consumption of beer, wine, and liquor on premise. Staff has reviewed the application and found that all of the administrative requirements have been met. The public hearing has also been appropriately advertised. Staff recommends approval.

**Mayor Eva Galambos** called for public comments either for or against this application. There were no comments from the public.

**Motion and Vote:** Councilmember Fries moved for Approval of Alcoholic Beverage License Application for Uncle Julio's at 1140 Hammond Dr, Bldg K, Suite 100, Sandy Springs, GA 30328. Applicant is Marina Saffel for Consumption on Premises of Wine, Malt Beverage & Distilled Spirits. Councilmember Jenkins seconded the motion. The motion carried unanimously.

## **Property**

### **(Agenda Item No. 09-315)**

9. Consideration of Approval of the Appropriation of the Property Located at 5996 Lake Forrest Drive through the Use of Eminent Domain

**Capital Program Director Marty Martin** stated this proposed item is required to execute the Lake Forest sidewalk and intersection improvement project. This particular parcel is at the southwest corner intersection of Lake Forest and Hammond, and it's required within the project to add the dedicated northbound left turn lane and a sidewalk at that southwest corner of the project. The process of Phase I has begun and offers have been made to the property owners. In the interest of timeliness and to move forward with executing this project, staff is bringing this proposal to Council this evening. In the meantime, staff continues to negotiate in good faith with the property owner.

**Councilmember Doug MacGinnitie** asked if there was an impasse or if staff was just trying to move this along quickly.

Capital Program Director Martin stated as of this morning, the City did receive an initial counter offer from the property owner. It is the first correspondence staff has received to move forward with any negotiations.

**City Attorney Wendell Willard** stated staff would proceed with continued negotiations in hopes of coming to a resolution. Staff is concerned from a time standpoint with the letting of the contract, and having access to this area. Staff cannot let the contract with the property under ownership, so with that in mind, not knowing how long negotiations might continue, this will be in place, should it become an impasse and the City feels necessary to let the contract.

**Councilmember Dianne Fries** asked if the items were moving in parallel.

City Attorney Willard answered yes.

**Mayor Eva Galambos** asked if there was an offer from anyone to give the needed land to the City for free.

**Councilmember Karen Meinzen McEnerny** stated the condos across the street, offered for the sidewalk.

Mayor Galambos asked if it is the same general area.

Capital Program Director Martin responded yes.

Councilmember MacGinnitie asked how much land the City would take.

Councilmember Meinzen McEnerny stated it would be .06 acres.

City Attorney Willard stated it would be six one hundredths of an acre.

Mayor Galambos asked if Council had any further questions.

Mayor Galambos called for public comments for this application. There were no comments from the public.

Mayor Galambos called for public comments against this application.

**Renette Todd, Oakwood, GA** stated she was speaking on behalf of her mother, Margaret L. Wyle, who owns the property. They feel the sidewalk is being placed on the wrong side of the street. There is an easement, which was discussed, on the South side, and that is also the side that the school is on. If the sidewalk goes over on her mother's property, people coming from the north will have to cross twice to go back to the school, which they feel is a clear and present danger to the children, especially since there is already an easement available on the other side of the street that the school is on.

Also, the bus stop on Hammond is on the other side of the street, so anybody getting off MARTA would have to cross the intersection to exit and then cross back to go to the school. It is understood there is a need for widening Lake Forest Road to accommodate a turn lane. However, the City's purchase offer was based on properties that their appraiser used that were eight, ten, and twelve miles away from Sandy Springs, not inside the city limits, and not in Fulton County. She stated they have hired an appraiser with only sixty days to do so. The City had ten months to prepare their paperwork, but they had sixty days to find an appraiser, get information together, and make a counter offer. In order to expedite this matter, they have made a counter offer, and respectfully request that this item be postponed until they have time to negotiate.

**Councilmember Rusty Paul** directed a question to the City Attorney. He stated he understood the desire to be able to move in parallel to keep this project moving forward, but once the City takes this official action, in essence, the City has taken the property, not for free, but by paying a cost based on our estimate. He asked if the City takes official action, what does that do to the process.

City Attorney Willard explained the steps for the process. He stated, tonight, staff is asking for a resolution only to authorize going forward with the proceeding of what is called a declaration of taking under Title 32 of our code, which deals with highways, right-of-ways, and sidewalks. The action will not be filed immediately. The Public Works officials will address the anticipated time for a contract to be let, because the City cannot let the contract without having ownership of the right-of-ways that are required for that project. The City is running in parallel in the sense that Council is authorizing staff to move forward, but, no filing is done until staff has exhausted all abilities to negotiate to get the fair market value for the property.

Councilmember Paul asked for verification that the process then would be the City would go ahead and take the title to the property, but then leave the door open to determine what the cost of that taking would be based on the negotiations.

City Attorney Willard stated part of his statement was true. He then explained the declaration of taking. When the City files the documents in court for the legal proceeding, the City also files what was determined from our appraiser to be the market value of what is being acquired. At that point, the court writes an order which grants the City title to the property. It still doesn't stop the ability of the property owner to proceed with a challenge to the fair market value, which they can do all the way through to a jury trial.

Councilmember MacGinnitie stated that the property owner would have to hire a lawyer and spend money to proceed with a challenge.

City Attorney Willard stated yes, unless they wanted to do it pro se.

Councilmember MacGinnitie reiterated that the property owner would have to hire a lawyer and spend money to proceed with a challenge.

City Attorney Willard stated that is correct.

**Councilmember Ashley Jenkins** asked Capital Program Director Martin if the turn lane would be on Hammond Drive to go south on Lake Forest.

Capital Program Director Martin stated the turn lane is required from Lake Forest northbound and is a dedicated left turn lane to go west on Hammond.

Councilmember Jenkins asked what part of Mrs. Wyle's property would be taken.

Capital Program Director Martin stated it would be the very northeastern most edge of the property to widen the roadway to the west.

Councilmember Jenkins asked if the sidewalk would go to the western side and also if the subdivision to the south, Cameron Manor Way, had given property to the City.

Capital Program Director Martin stated the City did not require any additional property from Cameron Manor Way.

**Motion and Second:** Councilmember Meinzen McEnery moved to defer agenda item 09-315, consideration of eminent domain, in that it chills the negotiations between the homeowner and the City, and that we preserve her rights to adequate time to gather the information she needs to negotiate in good faith with the City. Councilmember MacGinnitie seconded the motion.

Councilmember Jenkins requested the motion include a date.

City Attorney Willard stated the motion needs to be in the form of a deferral and date certain. He asked Mr. Martin in what time frame he needed the contract to be completed.

Capital Program Director Martin stated staff anticipates the bid opening on January 12, 2010.

Councilmember Meinzen McEnery stated she would take a recommendation from the City Attorney as to a date certain motion.

City Attorney Willard stated if the bid opening is January 12, 2010, the City needs to be prepared to finalize, purchase, or proceed by the last meeting of the month of January, so by early February the City can tell the contractor that we have full right of access or ownership to the property.

Councilmember Meinzen McEnery stated there is an early February meeting and asked if the first meeting in February would be enough time.

Mayor Galambos asked about moving it to the second meeting in January.

Councilmember MacGinnitie withdrew his second.

**Amendment to Motion:** Councilmember Meinzen McEnery moved to defer the motion of the eminent domain resolution until the second meeting in January of 2010. Councilmember MacGinnitie seconded the motion.

Councilmember Paul stated he was he was trying to figure out the purpose. He asked if it was important for Council to vote on the motion tonight.

City Attorney Willard stated it is not a drop dead date tonight, which is why he was trying to get clarity on what staff is doing bid wise and with the contract letting. The contract letting is probably not until early February and the bid opening is January 12, 2010, so there is time before the contract is awarded. At the time of awarding the contract, the City has to certify with the contractor that the City has access to the property.

Councilmember MacGinnitie stated he felt eminent domain should only be used as a last resort. It is the most aggressive use of government power that exists, and the City should let it run its course and see where it gets to. That's what is normally done until an impasse is reached, not because it's convenient.

Councilmember Fries stated the City normally runs both processes at the same time so projects aren't backed up and postponed. Of the twenty times that the City has run in parallel, they have actually had to do it once. She stated she didn't understand why all of a sudden things are being second guessed from what has normally been done for the past four years.

Councilmember McEnery stated this is about Mrs. Wyle's property rights, and not chilling the negotiations with the City, not what is convenient for the City for executing a contract. If executing a contract is a parallel consideration, that's fine, but first and foremost should be the property owner's rights. If Mrs. Wyle needs additional time, as stipulated in the motion, then that's the least that Council can do to protect her rights.

Mayor Galambos asked if there was any other discussion and then for a vote.

**Vote on Amendment to Motion:** The motion failed 2-4, with Councilmember Fries, Councilmember Paul, Councilmember Jenkins, and Councilmember DeJulio voting in opposition.

**Motion and Vote:** Councilmember Fries moved for approval of agenda item 09-315, Approval of the Appropriation of the Property Located at 5996 Lake Forrest Drive through the Use of Eminent Domain. Councilmember DeJulio seconded the motion. The motion carried 4-2, with Councilmember MacGinnitie and Councilmember Meinzen McEnery voting in opposition.

**Resolution No. 2009-12-90**

**Rezoning**

**(Agenda Item No. 09-316)**

10. **RZ09-001/CV09-003** - 5395 Roswell Road (SR9), *Applicant: Church of Scientology*, To rezone from O-I conditional to O-I to allow for a church in the existing building and to expand the building by enclosing the existing parking deck, with concurrent variances

**Assistant Director of Planning and Zoning Patrice Ruffin** stated the last time this case was heard the applicant had revised their site plan to allow for additional parking on the office site. Council wanted the plans sent back to Planning Commission to allow them time to review that proposal. The petition was heard at the November 19th Planning Commission hearing, and the Commission recommended approval subject to staff conditions. Staff presented two sets of conditions, staff recommended conditions and an alternate set of conditions. The Planning Commission recommended approval subject to staff conditions.

**Mayor Eva Galambos** asked if it was worthwhile to read out the staff conditions.

Assistant Director of Planning and Zoning Ruffin read the most important conditions, which were: the building be left as is, the parking area underneath not be enclosed, and the applicant be allowed to use the parking as is on site.

**Woody Galloway, Dillard and Galloway, LLC**, stated he was representing the applicant, the Church of Scientology. The application involves 1.7 acres of land which is located at the northeast corner of Roswell Road and Glenridge. The property is currently zoned to the O-I conditional classification, and the applicant seeks a rezoning to the O-I classification in order to allow the Church of Scientology to move their church to this location, and to allow a forty-two thousand, nine hundred and sixteen square foot church to be operated at this location. The issue in this case has not been one of land use. It has been one of parking and a perceived issue as it relates to traffic, neither one of which are currently a problem, given the fact that the applicant has made a number of changes to the request. The Sandy Springs parking regulations require churches and other places of worship to provide one

space for every three point five fixed seats, or one space for every thirty square feet in the largest assembly area. If that ratio is applied to the Church of Scientology site, forty-six parking spaces would be required. Under the original proposal, eighty one parking spaces were proposed. Staff originally expressed concern as it relates to the adequacy of the parking provided, because of the relatively small size of the chapel. The applicant then worked with staff and the City's Attorney's office to develop the alternate conditions, which are also recommended for approval by staff. An occupancy cap of two hundred eighty-three people at one time was placed on the church. That was based on eighty-one parking spaces, and the staff recommended approval indicated that was adequate parking to serve the needs of the site. Even after the applicant gained approval from staff based on the two hundred eighty-three person cap, the Church of Scientology continued to work to try to address any perceived issues as related to the application. As a result, the Church of Scientology voluntarily reduced the cap from two hundred and eighty-three to a hundred and seventy, and increased the number of parking spaces on site from eighty-one to a hundred and eleven. The result is the proposal of one space per one point five occupants of the building. According to the code, the requirement is one space for every three point five fixed seats, or one space per every thirty square feet of assembly space. Applying that ratio to the site, it would require forty-six spaces. With a hundred and eleven spaces being proposed, the applicant is providing two point four times what the code requires for Sandy Springs.

In addition, the applicants are self imposing a cap on the occupants at one hundred and seventy. At the bottom of Page 2 of the staff's recommendation, it states staff's opinion that the proposed request of forty-two thousand, nine hundred and sixteen square feet will meet the level of parking necessary to support the proposed use and occupancy of one hundred and seventy persons. Therefore, staff concludes that there will be an adequate amount of parking for the proposed forty-two thousand nine hundred and sixteen square feet with the occupancy limited to one hundred and seventy. The Church of Scientology is agreeing to the conditions and imposing limitations that the City could not impose on the Church of Scientology; but, the applicant has done so in order to address the perceived issues as they relate to the church. The applicant believes that the alternate conditions address all reasonable concerns regarding the church, and asks that Council approve the request pursuant to the alternate conditions. He then reserved the remaining time for rebuttal.

Mayor Galambos called for public comment in support of the application. There were no comments from the public.

**Bob Adams, Vice President of the Church of Scientology** reserved his comments for rebuttal.

Mayor Galambos called for public comment in opposition to the application.

**Daniel Hubbell, 5375 Roswell Road**, stated he is an architect with eighteen years of experience, owner of the Sandy Springs Architecture Firm, and a resident of the Courtyards of Glenridge. In all his years as an architect, he has never seen a zoning case that has such a serious deficiency in minimum required parking as this one. To make matters worse, there are several problems with this application. The applicant clearly has not been professionally advised of the property's land use facts, or what may be reasonably permissible according to ordinance. Here are the facts. First is the wrong building square footage. At the last Planning Commission meeting in which the Planning Commission denied the use of four floors, Mr. Galloway admitted that the square footage in the application was wrong, and under recorded by almost fifteen hundred square feet. Second is the violation of rezoning procedures. This application is defective in a number of ways, and therefore, not in accord with Article 27 of our ordinance's petition requirements, such as the site plan is missing important information. Third is the property is already over developed. By public zoning records, this building already exceeds the City's density restrictions by three thousand square feet. Still, the applicant proposes to exceed these restrictions by ten thousand square feet. If approved, this will be notably disastrous. Fourth is the non-conforming land use density. The actual building square footage with the enclosure of the basement is a violation of the City's Comprehensive Land Use Plan. It exceeds the maximum allowed square foot per acre density. Fifth is not enough onsite parking. If standard formulas of three per thousand square feet for offices, five per thousand square feet for classrooms, and one per thirty for a sanctuary are applied to just three floors, this application requires a minimum of a hundred and fifty-six

parking spaces. Four floors require a minimum of two hundred spaces, but the applicant is now only proposing one hundred and eleven spaces for four floors, with only seventy being permanent onsite spaces. Forty-one spaces are not even on the property, but located on a non-exclusive easement. This is parking which does not serve the designated use as required by ordinance. Sixth is the building program is too intense. Twenty-four of seventy spaces have been crammed into a structure that was designed for offices. Per building code, classrooms and sanctuaries allow six times more occupants than offices. He asked where the additional parking for the assembly uses was located. Seventh is that many of the other permitted uses under office and institutional, including assembly halls, schools, or traditional church; would be considered under parked for this property. These are uses which require much more parking for the assembly occupancy. Eighth is the parking ratio is ridiculously low. Only two point four six spaces per one thousand square feet is grossly insufficient for a proposal that adds another floor and converts forty-five percent of the building to more intensive assembly uses. A typical office building requires a minimum of three spaces per thousand. The City's compelling interest is sufficient parking. It's obvious by any professional standard the applicant is unable to provide the required parking for assembly spaces. They cannot satisfy the parking of the land use requirements of the zoning ordinance.

**Jane Kelly, 4590 Windsor Park Place**, stated she represents the High Point Civic Association, with five hundred active members. They strongly oppose the expansion of the building and allowing insufficient parking. The applicant wants to increase the square footage by thirty-three percent, yet decrease the available area for parking. Enclosing the basement garage would remove thirty spaces. This is a self imposed hardship. They propose to squeeze a hundred and eleven parking spaces onto a surface area that currently accommodates eighty one spaces, not just by restriping, but also by paving over three areas of green space to create eighteen spaces, carving into set back areas to add twelve new spaces, asking to have the parking islands with shade trees entirely waived, and cutting down more trees. This requires four variances. Why have ordinances if we are not going to enforce them? Plus, ten to twelve parking spaces will be lost when intersection improvements are made, as shown in a 2003 D.O.T. consultant's drawing. Our City transportation plan includes improvements to this intersection in its five year plan. This applicant is asking to use flawed parking studies, and a basically unenforceable occupancy limit to justify inadequate parking. That would be preferential. The applicant offered to limit occupancy to a hundred and seventy people. Yet, based on their own Dunwoody parking figures, they would be fifty spaces under parked, and their proposal allows an increase in the occupancy three hundred and sixty-five days a year by use of offsite parking. If the leases are lost, the development would still stand. This would place an undue burden upon residents to report violations, and the City to enforce them. Our Zoning Ordinance specifies that no more than twenty percent of the total parking requirement may be provided off site. Twenty percent of a hundred and eleven spaces would limit them to twenty-two spaces off site, which includes that easement. Even if the alternate conditions were to be passed, this building would be rendered a white elephant, probably unusable by another organization without major renovation to restore the basement parking and decrease the square footage to something acceptable for the site. This site is already over developed. It's not a suitable site for increased density and insufficient parking for any organization.

**Robin Beechey, 20 Willow Glen**, stated he represents the Willow Glen Condominium Association. He stated this church has ambitions to grow. Why else would it spend \$5.6 million on acquisition of the site, and \$3.5 million on alterations for a building four times the size of its Dunwoody premises? There are many inconsistencies and inaccuracies in this application. To speak on the current membership of a hundred and twenty, yet the churches PR Representative says they have about six hundred members. Two hundred are the regular members and then it's learned there are literally thousands. There are close to ten thousand people who have joined since the inception of the organization in Atlanta. There is not a Church of Scientology on every street corner. This is not just another parish church. According to the church's website, this will be their flagship, not just for Atlanta, but for the whole Deep South, with this few parking spaces. Once a church is established on this site, the City is on a slippery slope with little or no control over the future growth. This is the fourth attempt by the applicant to side step the parking requirements. Despite the numerous deferrals and the attempt to work out solutions behind closed doors, it still fails to do so. For nearly a year the applicant has been trying to fit a quart into a pint pot. Now there is the major flaw in their application concerning the non exclusive easement. Not only do they not have just over sixty percent of the spaces they claim in the application, but there are also spaces that make a complete nonsense of all the

parking and all the occupancy caps proposed by the applicant or by staff. Those ratios are meaningless. The Association fails to see how any application can be approved tonight, whether for three floors or for four floors, when the parking plan to support it is not there, and has never been there. The objective attorney would explain why Section 28 of the Ordinance can't be used as a magic wand to remedy these fundamental defects in the application. If, despite our arguments, Council is determined to approve this application in some form, the Association asks that the community conditions sought by the local neighborhoods are included. The citizens of Sandy Springs see this as a test of the resolve of the City Council to uphold the principle of better protection of neighborhoods, upon which this City came into existence. It is also seen as a test of Council's willingness to treat both applicant and local neighborhoods even handed, to follow the procedural requirements of the City's ordinances, and to adhere to best practices of open government.

**Patty Burns, 5400 Roswell Road**, stated she is the President of Round Hill Condominiums. She stated the staff's opinion of the zoning impact analysis is incorrect, because it suggests this proposed site is suitable in view of the use and development of adjacent and nearby property. When looking at the aerial view of this location, seven eighths of the surrounding area is high density residential townhomes and condominium communities, and not commercial developments. They are directly adjacent to the site and will be adversely affected. In addition, and contrary to the staff's recommendation, it will become excessive and burdensome to the existing infrastructure of the adjacent streets and intersection. The applicant has owned this building since 2005 and there has been nothing but deterioration and neglect of the building and property. The next two slides show that this lack of basic upkeep still continues. This is disrespectful to the neighborhood and if approved, would devalue our property. The tax payers, the homeowners, and residents of Sandy Springs strongly oppose this rezoning. There are sixteen homeowners and civic associations submitting letters of objection. There are seven hundred petitions from surrounding neighborhoods that will be severely affected and most of them describe this intersection as a public safety hazard with dangerous and erratic traffic. She hopes the Mayor and City Council will step back and look at the overall picture of the tremendous growth that this organization has planned and deny the rezoning request.

**Brian Daughdrill, Roberts and Daughdrill, P.C.**, stated he represents the opponents and Mayor and Council should have received a supplemental objection. They have also sent a title abstract up to Fulton County to review. He thinks the forty-one spaces that are listed as on site are not actually physically on site; they are on the post office property. This property actually only has seventy spaces, if it is reconfigured, and will have even less than that if it's not. Under ordinance 18.2 there are two critical pieces. The first is that all uses have to comply with the offsite parking. The second is that parking has to be onsite, or if it is offsite, it has to comply with the exclusivity use, so it can't be something that is shared with someone else, unless that property comes in as well for conditions to be imposed on both properties. The post office is not here today in front of Mayor and Council. The site plan is a little bit misleading because the site plan that is part of this application reflects property that is not physically owned by the Church of Scientology. There is a property line there, but the overall site plan that is part of the application doesn't really show that those forty-one spaces can't be counted for their onsite parking. If you limit it to the twenty percent that section 19.36 of the ordinance requires, then only twenty-three of those offsite spaces can be counted towards the required parking. Woody stated under the ordinance the Church would only be required to have forty-six spaces, but the applicant has made a great deal of effort to point out that this church does not operate as a traditional church, and that their main focus is not on the sanctuary, but on the smaller meeting rooms. It was appropriate for Staff to do what they did as far as analyzing this as offices and classrooms, because the applicant has made a point throughout the process to say they are not a traditional sanctuary driven church. Based on their parking studies, which they have asked Staff to go by, they have come up with a hundred and thirteen required spaces. Of that hundred and thirteen required spaces, twenty-three of them could be off site by way of an easement. The second piece is the easement is not exclusive, it is a non-exclusive, it cannot be counted, which limits them down to seventy spaces. This leads to a forty-three thousand square foot building that only has seventy spaces, which will be completely unmanageable and the City will have no way to keep up with or enforce the parking conditions. The opponents respectfully ask Mayor and Council to decline.

**Sheila O'Shea, 5400 Roswell Road**, stated despite Mr. Galloway's efforts to dismiss the neighborhood's concerns

as merely a parking issue, there are far more serious issues. The Petitioner claims the square footage must be expanded for them to use this building. The building is already too large for the space it occupies, and only exists on the lot by being grandfathered in from previous variances. Even staff recommendations of three floors would be tantamount to denial, as the petitioner has been quite insistent on the enclosure of the basement, to the point of making the absurd argument that denying them would be religious discrimination. If the square footage is indeed insufficient, then they should find a property that already has the space they need instead of overbuilding this one. The clearest path is to deny the application. They have been disingenuous to the point of deception and should not be rewarded for it.

**Bob Adams, Vice President of the Church of Scientology International, Los Angeles, California**, stated he came to talk about the church and its zoning application. The church supports the application as it is written, and as the statute for the City and County read. All the church asks is to be granted the same rights as anyone else. The Church of Scientology has eighty-one hundred churches and missions in a hundred and sixty five countries. In those cities the city fathers and citizens know that the Scientology members are good citizens, and they pay attention to their responsibilities as a group. He stated that was the message that he had from all the parishioners around the world, and in particular here in Sandy Springs. The parishioners in Sandy Springs really look forward to moving into their new home, their new church where it stands, and being able to carry out their religious practices as have been defined. The church really does need that space and it's really the way the religion operates. He hopes Mayor and Council take all of the information he provided into consideration when making their decision on the matter.

**Nancy Davis, 17218 Deer Trail**, stated she is a long term Scientologist and an Atlanta native and she came back to Atlanta after being in other cities for many years. She has been to many different churches of Scientology, and the Atlanta Church is now her home. She is very excited about being able to move into the new facility and having a sanctuary, which is very important. She is sure others wouldn't want to have a church without having a chapel or sanctuary present. So that is an important point for the Church of Scientology. The church does understand and has taken very seriously the concerns about parking. All of the churches of Scientology she has participated in have always been good neighbors. They do keep their word, once it is given, and do become a member of the community. It is a difficult decision and emotional issue for everyone and certainly she is sorry it has turned into that. The church just wants to be a very good member of the Sandy Springs community. They are very excited about being part of the community and having their church in Sandy Springs.

**Public Comment Cards – did not wish to speak, comments for the record**

**Howard Gruensfelder, Willow Glen Condo Association, 33 Willow Glen NE** – I oppose the Church of Scientology.

**Albert Gruandfolder, 32 Willow Glen NE** – The intersection at Roswell Road and Glenridge Drive is a total mess. No more traffic caused by the church.

**Deborah Hill, 5269 Glenridge Drive** – It now takes up to eight minutes to turn left from our building/subdivision. How will we do this when one hundred and seventy-three people leave and arrive to and from this building?

**End of Public Comment Cards**

Woody Galloway, Dillard and Galloway, LLC, stated he would like to go over a number of issues that came up during the public comment. The church bought the site knowing it was zoned O-I, knowing what the parking was out there, but also knowing what the code requires, and what the City of Sandy Springs has always applied, which is one space for three point five seats in the main auditorium. In this case, if that ordinance is applied, it only requires forty-six parking spaces and there are eighty-one onsite.

As it relates to easement, there is a permanent easement over the property that is adjacent to the church. When this

property was divided, the post office wanted additional property. Prior to the development of the post office, the property was subdivided, but a permanent easement was kept on that property. The City Attorney's office has reviewed all that because the issue came up very early in the process. They agreed that the easement is sufficient, and it meets the requirements of the Code. The site is not over developed as it relates to the Land Use Plan. The Land Use Plan indicates, as is confirmed by the Staff in their analysis, that up to twenty-five thousand square feet is allowed under the Plan for development on this property, in compliance with the Land Use Plan's recommendation.

As it relates to square footage, the applicant has a number of different documents including the original survey and the due diligence report that were given to the church at the time of purchase, which indicate the square footage is forty-two thousand nine hundred and sixteen square feet. This is also confirmed by an engineer's survey, which was dated February 12, 2007, and the full lay out by Peacock and Associates, which was included in the due diligence report. Peacock and Associates architects indicated the square footage was less than forty-two thousand nine hundred and sixteen square feet. A full set of architectural and building plans were prepared based on that square footage, and it has independently confirmed the square footage. It's a meaningless argument as it relates to square footage, because what the church has done is apply a cap to the number of people that should be in the church at any one time at a hundred and seventy. In terms of impact, as it relates to anybody outside of the building, the only impacts are dictated by having cars come in and out and whether there is adequate parking. As for public services that are provided, that's dictated by how many people are in the building. There are no caps at all under the existing office, or under the proposal at thirty-two thousand square feet. What the church has done is propose a cap to address that issue. In addition, Staff will review any plans for renovation and improvements of the site, and they will only approve forty-two thousand nine hundred and sixteen square feet.

As it relates to the variances, the applicant can have ninety-seven controlled spaces for the property based on restriping. The only reason the church is going above that is to try to address the perceived lack of parking. The studies provided were completed by professional, licensed engineers that did traffic studies in Nashville, Buffalo and Dunwoody, and all studies show that the parking that is out there today meets the requirements, and meets any anticipated demand. If Council looks at those churches that have been established for a longer period of time and then extrapolates and applies it from those ratios based on the number of square feet at the proposed location, the applicant far exceeds the number of spaces that would be necessary. The variances are only required because the applicant is trying to address an issue that others are concerned with. The applicant does not in any respect agree with the fact that there is not adequate parking available today, or that the City Council could impose anything other than looking at the one space per every three point five seats in the largest auditorium, which is what is done for every other church. General Law indicates that no one can discriminate between churches and discriminate based on religion. That's what this country is founded on, and yet that is exactly what the opponent is asking Council to do. The parking is there.

As it relates to the unenforceability of the cap, the City has the ability to enforce that. The City's Code sets forth the responsibilities, and the Staff has indicated they certainly can enforce that cap. The City does as it relates to fire code, and it can certainly be done in relation to the Church of Scientology. The City has done it and approved it as it relates to schools, and it can be done as it relates to the Church of Scientology. The penalty for violation is one thousand dollars per day or imprisonment or both.

As it relates to the Dunwoody figures, if the studies that the applicant submitted are applied, they prove that because the Church of Scientology uses so many square feet per person, they are inefficient users of space. In the practice of their religion they require an inordinate amount of space per person. As a result, their parking and their traffic demands are very low, which was proven by the study that was submitted by a national engineering firm. John Walker with the firm was available to address any questions that Council may have. The applicant looked at two different sites before they proposed to increase the number of parking spaces on site and before they proposed a cap at a hundred and seventy. Those were all things that the church did in order to try to address the perceived problem, not an actual problem, a perceived problem.

As it relates to traffic, rates show that the existing office use of this property would generate far more trips per day,

with those trips being concentrated during the A.M. and P.M. peak hours when traffic is the biggest issue.

The Council has three choices before them. They can deny the request, which would leave the property zoned O-I. There would be no caps, because under O-I there are no caps to the existing property. It would generate more traffic than the proposed use, and the City would have no control and no authority to control the number of people that come in and out of the site, how many are there at any one time, and the traffic generated by that. The Council has the option to approve pursuant to the thirty-two thousand square foot recommendation by Planning Commission. That would allow use of a church, but with no cap as far as how many people could be there. The prior occupancy for this site, on the four floors, is over a thousand people, so there effectively is no occupancy cap as it relates to a church use or an office use, other than the fire code, and that would allow substantially more people than what the church is proposing. The thirty-two thousand square foot limitation would not work for the church. It does not address the church's needs, and the rights that they have to occupy the space, and use it for its intended purposes for religious exercise. It would hamper and greatly burden the church's ability to practice to the extent that they could not use the site, so it is not acceptable to the church at the thirty-two thousand square foot level. The applicant has proven to staff and the City Attorney's Office that they have a great need for space as part of their religious doctrine. It is actually written into some of the Church of Scientology's doctrinal statements the need for space for each of the people that come, their attendees, as well as their staff. The applicant has shown Council, the City Attorney's Office, and staff, how the space is used and the fact that four or five classrooms will be dictated by one classroom. The church has one staff in the day and one staff at night in which they divide space allocated to each of those individuals. They have a need for a great deal of space and there is no reason to limit the square footage to thirty-two thousand square feet. By approving forty-two thousand nine hundred sixteen square feet, the church is willing to accept conditions that the City cannot impose on a church. The church is willing to accept the condition of a hundred and seventy people and the regulations for what happens when going off site with parking. The Community Development Director, Nancy Leathers would have to approve a transportation plan as it relates to offsite parking. The Church of Scientology does not anticipate a need for any offsite parking of any kind in the immediate future, or even in the long term future. If you look at the Nashville Church of Scientology, which has five times the members that the Sandy Springs church has, and apply those ratios to the Church of Scientology here, there would be forty-five or fifty-five spaces required, and that's five times the size of the Sandy Springs church. The applicant is proposing to provide a hundred and eleven parking spaces, which is two point four times what the code requires. The only thing the City can impose is the code requirement of two point four times, and that is one space for every one point five people in the facility. Mr. Galloway stated that he did an informal survey and looked at a lot of different churches within Sandy Springs and found that there are no limitations. The Church of Scientology is imposing limitation on themselves. Regulations are one space per every three point five in the largest assembly room, yet other churches operate Sunday schools during the same time their largest assembly room is operating. So effectively, that ratio is one space for every five point five or six people in the building. The bottom line is there is absolutely no reason to deny the request. The staff has recommended approval pursuant to the alternate conditions which are acceptable to the applicant. Graphics is not an issue. Parking is not an issue. Use is not an issue. The Church is adjacent to non residential uses. The City's ordinance allows a church in residential. The church is on a five lane highway. The application is not imposing a mega church into the middle of a subdivision. There are churches in Sandy Springs on two lane roads. The Church of Scientology is on a five lane U.S. and State Highway with a light and adequate parking, which was proven by the applicants studies.

Mayor Galambos asked if there were questions from the Council.

**Councilmember Karen Meinzen McEnery** asked if the assertions are true that this application complies with the Comp Plan in terms of the density of twenty-five thousand square feet per acre.

Assistant Director of Planning and Zoning Ruffin stated it is correct that the forty-three thousand nine hundred and sixteen square feet comes out to twenty-four thousand six hundred seventy-one square feet per acre.

Councilmember Meinzen McEnery asked if that is at one point seven acres of property.

Assistant Director of Planning and Zoning Ruffin answered yes.

Councilmember Meinzen McEnery asked if you take the forty-three thousand nine hundred sixteen and divide it by one point seven.

Assistant Director of Planning and Zoning Ruffin stated it would be one point seven eight.

Councilmember Meinzen McEnery asked if it is true that that section 19.36 of the Zoning Code limits additional offsite parking to twenty percent of the total requirement.

**Director of Community Development Nancy Leathers** answered that is correct. She then asked for the City Attorney to respond to the question, because he conducted the research on it.

**Assistant City Attorney Cecil McLendon** stated the Code Section 19.36.1 (b) (2) provides that there is a twenty percent requirement for offsite parking. Under this application, that parking was previously allowed in the easement area that was already adjacent to this parcel. There is a distinction in that the area being discussed was already a part of this by virtue of the previous zoning in Fulton County.

Mayor Galambos asked if the Assistant City Attorney is stating that the City is not contravening that section of the code.

Assistant City Attorney McLendon stated it's a distinction that's probably not addressed specifically in the code.

Councilmember Meinzen McEnery stated this entire application is coming before Council for a whole new land use and the forty-one spaces the opponents are suggesting are non-exclusive. Therefore, they fall under the additional parking. She asked if that would not obviate the grandfathering suggestion.

Assistant City Attorney McLendon stated with the new use coming in, it would be a very clear distinction if this was brought in and they were attempting to append that easement area onto the parcel. With the pre-existing fact that these were both part of a zoning, he feels the City does have an issue. He stated if Nancy Leathers interpretation of the ordinance is that it meets the requirement, he would absolutely defer to that interpretation.

Councilmember Meinzen McEnery asked if the opponent's argument that the 41 non-exclusive easement spaces that exist for the patrons of the post office are not considered additional parking.

Assistant City Attorney McLendon stated as a matter of law, when he reads that code section, he wouldn't say it has to go. As he reads the code section of our Zoning Ordinance, and he understands that previous easement area was involved in the prior zoning and both were brought forward in the prior zoning as one parcel. He would not say that is a basis to reject this at this time.

**Councilmember Dianne Fries** stated there was discussion about the cap of one hundred seventy and Woody had mentioned that the City has caps in some other things, such as the schools. She asked if the City monitored the school cap in the same fashion as it would monitor the church. The school sends the City a total number from their enrollment once a year.

Director of Community Development Leathers stated Councilmember Fries was correct. However, these conditions do incorporate a monthly reporting from the church.

Councilmember Fries asked if this is something new to the City, when it comes to these caps.

Director of Community Development Leathers answered yes, the City has not had this before.

Councilmember Fries asked if it would require staff, at a minimum, monthly, to go and spot check.

Director of Community Development Leathers stated she didn't think it would do that, but the City would get those reports monthly. The City would have to assess them and determine how they would be handled, since this has never been done before.

Mayor Galambos asked if there were any additional questions.

**Councilmember Rusty Paul** directed questions at Mr. Galloway. He stated that there has been talk about this being a regional church that would reach across the Atlanta Metro Area as well as Georgia and the Southeast. He asked if that is an accurate statement and if there would be people coming from different locations.

Mr. Galloway stated it is and it isn't an accurate statement. This will be their main church in Georgia. But, in Scientology a person moves up levels in terms of their understanding and the course work they have done, et cetera. Once they get above a certain level, anybody from the Southeast would go to Clearwater, Florida, which is more their regional area in a higher level church, in terms of what they offer. There are also other areas and other churches that offer a higher level of course study than would ever be offered at this location. If the church ever exceeds the need, in terms of the number of people, then they would establish mission churches in the surrounding areas that would address the need in terms of space. This is seen as a state wide, or potentially even a multi state location, but there are limitations on that. Again, anyone that would move on to a regional church would go to Clearwater or another higher level church once they reach a certain level.

Councilmember Paul asked why the practice of the religion requires an inordinate amount of space.

Mr. Galloway stated he can go through the space plan drawings with Council.

Councilmember Paul asked for clarification of what in their practice requires an inordinate amount of space.

Mr. Galloway stated an example would be people would go to a classroom on the second floor at the beginning of a course of study. That room is more or less a quiet or a study hall type of atmosphere where self directed study is completed. They would then proceed to make application of what was just learned in a number of associated classrooms, four or five in some instances. They might use an adjacent room with a study buddy and go through an exercise. Another room might be a film room. During that same period of time they would proceed through as many as five additional classrooms, so there has to be five seats available for one person in that particular area.

In addition they have a library, bookstore, and large viewing/museum area. They have a day and night time staff. Square footage is allocated for each of those staff members to have their own office and their own areas where they would come together to do tasks.

Councilmember Paul asked if the bookstore is a retail bookstore that is open to the public.

Mr. Galloway stated it is a bookstore that is similar to a bookstore in any other type of church that sells books.

Councilmember Paul asked if it isn't a retail enterprise by definition.

Mr. Galloway answered yes it is.

Councilmember Paul asked if something is being sold to the public, is it not a retail activity?

Mr. Galloway stated it is an associated use with a principal use. It is an accessory use that is allowed under the City's Ordinance. There are very few churches that don't have a bookstore that someone from the public can just walk in.

Councilmember Paul asked if the museum will be open to the public.

Mr. Galloway stated all of the space is highly regulated and secure. Someone would have to pass through security in order to get into the space.

Councilmember Paul asked if it is open to the public.

Mr. Galloway stated it is technically open to the public and people that are interested in the Church of Scientology can come in and go into those areas, just as they can go in every other church in Sandy Springs.

Councilmember Paul stated in essence it's a public building open to anybody who may wish to visit. Most churches have sort of a "y'all come" mentality.

Mr. Galloway stated the Church of Scientology has an open policy, but they are very strict about their security because of groups in the United States that oppose the Church of Scientology and have done some pretty awful things. They have gone in and destroyed areas. They have made threats; anthrax threats for example.

Councilmember Paul asked if he lived in that neighborhood, would he be concerned with his security.

Mr. Galloway answered no because of the churches security.

Councilmember Paul stated that security is inside. What about the adjacent areas?

Mr. Galloway stated he does not believe the church is a security threat.

Councilmember Paul asked if the City of Sandy Springs should take into consideration potential threats to public safety.

Mr. Galloway stated it's something to be aware of. They have members in the City of Atlanta and the metropolitan area, particularly in Dunwoody. They have been in Atlanta since the '70's. They have not had an incident in terms of something that would cause a public problem. There is no reason to base a decision about zoning on the fact that people disagree with them.

Councilmember Paul stated they have had threats and they have had actions taken that in essence could create public safety issues.

**City Attorney Wendell Willard** stated so have mosques, synagogues, and even churches.

Councilmember Paul asked how they recruit members.

Mr. Galloway answered the same way other churches do.

Councilmember Paul asked if they are coming to Sandy Springs because of growth.

Mr. Galloway answered certainly they would like to grow. Because they are out of room in their current location, they found and purchased this location, in 2005. The entire church was going through an organizational effort to determine how each church should be organized, which is part of the reason there was a delay in this process. They have been in this zoning process for a year. They have prepared and completed building and architectural drawings that are ready to file to start construction.

Councilmember Paul stated it was indicated that Nashville is a church that has five times the membership of the Atlanta church, yet the metropolitan Atlanta area is significantly larger. He asked if this discrepancy is because it's

a regional church that you move to after you come to a certain level, or is it somewhat comparable in practice to what is anticipated in Atlanta.

Mr. Galloway stated it is comparable to what they anticipate in Atlanta, but it also has what's called a celebrity center that's associated with it. One church in one city may do better than another church in another city. They are five times bigger than the church in Atlanta in terms of active membership, and they have four times the staff. When you apply the actual parking study results in Nashville to the size church that they are proposing at the corner of Roswell Road, fifty-two spaces would be required with a church that's five times the size. That's based on actual data that was gathered during the study. The reason for that is because it's spread out and they don't have a lot of people that come at any one time. It's not a congregational style of worship like most people are used to. It is a lot of independent study, counseling, and that type of activity. The highest number of people at any one time in Dunwoody is sixty people. The highest number during the day during the three month period that the study was done was fifteen people.

Councilmember Fries asked if it would be a correct assumption for the applicant to think that Fulton County would have just automatically approved closing the underground parking. She also asked if that would be something they would have had to go through zoning for or if it is something that could have been done when the property was purchased.

Director of Community Development Leathers stated she doesn't believe so, because the same conditions in zoning which apply here in Sandy Springs applied in Fulton County. It is the same case, and the square footage that was approved is the square footage that is on this site.

Councilmember Fries stated she has a problem with the value of the building if the parking is enclosed. She is worried that if the church leaves the site for any reason, then the City is left with a building that doesn't function typically.

Director of Community Development Leathers stated the City Attorney needs to address that question because he addressed that issue as part of those conditions.

City Attorney Willard stated the City has a general use type property development with the building there being a normal office type building as opposed to a traditional church. When first brought up, the concern was are we allowing a change in that building where new owners, if the Church of Scientology moved out, could not use the acquired property which had previously been permitted with this enclosure. Someone coming behind the church has the right to have the use of the building with the enclosure. It is going to be difficult to back away from what we have already granted as a use and change of use.

Councilmember Fries stated she appreciates the applicant working with staff to fix some of the issues, but she is extremely uncomfortable with several of them. She feels this is putting undo pressure on the City to enforce things, even with the idea of putting the parking lot back when, and if, the property is sold.

**Motion and Second** Councilmember Fries moved to approve agenda item no. 09-316, RZ09-001/CV09-003 - 5395 Roswell Road (SR9), Applicant: Church of Scientology, with staff recommended conditions, not the alternate conditions, and any associated site plans referenced within these conditions. Councilmember Paul seconded the motion.

**Councilmember Ashley Jenkins** asked if there was a non-exclusive easement for the forty-one parking spaces with the post office.

City Attorney McLendon stated there is an easement.

Councilmember Jenkins asked is it an exclusive easement to the benefit of Scientology or is it a non-exclusive easement.?

City Attorney McLendon stated to his knowledge it is a non-exclusive easement.

Councilmember Meinzen McEnery stated she thought there had been a title search and she would bring that up when she got to speak.

Councilmember DeJulio stated he lived the closest to the church and he had some issues. He asked how many members were in the congregation in the Nashville location.

Mr. Galloway stated the Nashville congregation has five hundred active members and eighty staff and this location will have a hundred active members and twenty staff.

Councilmember DeJulio stated the Atlanta metropolitan area is five times the size of Nashville. Within two weeks, the occupancy of this building could be two to four hundred people and the City does not want to be in the business of counting parishioners, nor do the residents of the surrounding neighborhoods want to have to call enforcement. He thinks the self imposed limitation is meaningless. He stated that he doesn't go along with the non-exclusive rights for parking at the post office, especially during the holidays. He doesn't like the idea of restriping the parking lot to make the spaces smaller, because people would be squeezing their cars into spaces. And lastly he doesn't like the idea of doing away with green space to provide parking, because the City has been encouraging people to put more green space in parking areas. He stated that the church's location is at one of the worst intersections in Sandy Springs and the additional traffic and lack of parking is a concern.

Councilmember DeJulio stated it doesn't make sense for the City to have non-traditional rules to go along with non-traditional churches. At his church there is no need for security and anyone can come in and visit at any time, but with the Church of Scientology there is security, and if you don't have a security card, then you can't get in.

Mr. Galloway stated most major churches have security. The only reason they have security is because they want a safe environment for their parishioners and the people around it.

Councilmember Meinzen McEnery asked if it is true that there is no exclusive easement that was granted to the church or its predecessor in title that would grandfather the forty-one non-exclusive easement parking spaces.

Brian Daughdrill stated he would answer in two ways. The concept of grandfathering vaporizes for a new zoning application. If the application is denied, the applicant is grandfathered to whatever uses exist on the property as it stands. They cannot come in for an application and want to hold on to what is grandfathered and on the other hand want to see what else they can scoop up. The property has to be taken as it stands. The first thing is that the property isn't grandfathered. The second piece is there is not an exclusive easement. Page nine of the package from Roberts and Daughdrill is easement agreement number one, and the last paragraph on page nine states the easement is a non-exclusive perpetual easement. There is a provision in this easement whereby an exclusive easement could be granted at some point, if the applicant goes through and does what is required. Roberts and Daughdrill ran the title to make sure it has never been recorded. It's not part of the application. As it stands right now, there is no evidence of an exclusive easement. There is no evidence in chain of title. Council has a sworn affidavit from a title tracker with twelve years experience who has run thirty thousand titles. She ran every single deedbook from the point of where this originated to the present, and there has never been an exclusive easement granted to park. They do not have the exclusive right to park on this either as it's presently configured at twenty-five spaces, or at forty-one spaces, if Council allows them to reconfigure. These spaces under the City's Ordinance, Section 18.2, cannot be counted toward their required parking spaces and cannot be grandfathered, because it is a new application.

Mayor Galambos asked Mr. Galloway to comment on the points that were made.

Mr. Galloway stated he has not run the title on this property, but there is a non-exclusive easement onsite. There is a permanent non-exclusive easement. There are fifty-one spaces onsite. The requirement is forty-six spaces. Staff analyzed the need for the site based on a lot of different factors, and they came up with their recommendation, but

they also did look at the easement. The City Attorney looked at the easement and concluded there was adequate permanence to indicate that it could be counted.

City Attorney Willard stated it is recognized that they have an easement and that it is non-exclusive. Our ordinance does not require additional parking off premises to be exclusive.

Councilmember Meinzen McEnery asked if Section 19.3.6 applies, if there is a twenty percent cap on additional parking that is not onsite that is not exclusive.

Assistant City Attorney McLendon stated he didn't agree with Mr. Daughdrill that the grandfathering goes out the window just because it's a new application. That easement was previously appended to the larger parcel, and it's a permanent easement that's in place. Even if it's non-exclusive, it's a permanent easement that's in place, and it's that larger parcel that was subject to the previous Fulton County zoning. If that was the basis that this did not go forward, it could potentially be problematic.

Mayor Galambos asked if our ordinance requires it to be exclusive.

City Attorney Willard stated the ordinance doesn't require it to be exclusive. Mr. McLendon addressed the fact that because they come in for a rezoning doesn't mean they lose the ability to include what they have as a permanent easement for additional parking.

Councilmember Meinzen McEnery asked if the twenty percent rule applies to this new application.

City Attorney Willard stated he couldn't give an off the cuff opinion.

Assistant City Attorney McLendon stated that it was an off the cuff opinion, but it is not the strongest basis for this not to go forward.

Councilmember Meinzen McEnery stated this is an issue of parking, protecting the general public welfare, and safety of the community. Initially, staff calculated the amount of parking based on Section 18.2.1, which is based upon the proportion that each use contributes to the total. That would have generated forty-one seats, or in using Mr. Galloway's number, forty-one, looking at the strict interpretation of the Zoning Ordinance relative to a sanctuary area. The difference in the two numbers relates to the fact that the staff looked at it as one parking place per thirty feet for their sanctuary of one thousand two hundred eighteen. Upon further review, staff went to Section 28.1 Paragraph 3, and looked at the ability of the Council to impose conditions relative to protecting the public health, and they analyzed the parking impact by parking studies submitted by the applicant.

Mayor Galambos stated the Council has already read that information.

Councilmember Meinzen McEnery stated the analysis suggested three point five parking places per thousand. A recent analysis on proportional use, which is not in the Zoning Ordinance, came out at a hundred and forty-eight spaces. We have different numbers in terms of adequate parking. She is not sure whether it is one point five parking spaces that the applicant has voluntarily requested, or should it be a hundred and forty-eight spaces. It's all over the board. The evidence suggests that it is over developed and under parked. She is going to vote to deny.

Councilmember MacGinnitie wanted confirmation from Nancy Leathers that staff worked with the applicant, but in the end staff didn't recommend what the applicant asked for, but instead staff conditions that allow the building to basically sit as is and be used in that form.

Director of Community Development Leathers stated that is true, but a set of alternate conditions has been submitted that staff can support.

Councilmember MacGinnitie added when the Planning Commission heard the same matter, they too did not grant what the applicant was looking for, but instead agreed staff conditions were appropriate, and voted in favor of that.

Director of Community Development Leathers stated that was correct.

Councilmember MacGinnitie asked Mr. Galloway if those conditions are unacceptable to the church.

Mr. Galloway stated that is correct, because it doesn't allow them to operate and practice their religion.

**Call of the Question:** Councilmember Jenkins called the question. Councilmember Paul seconded the motion to call the question.

**Vote on the Call:** The motion to call carried unanimously.

**Repeat of Motion and Second:** Councilmember Fries moved to approve agenda item no. 09-316, RZ09-001/CV09-003 - 5395 Roswell Road (SR9), Applicant: Church of Scientology, with staff recommended conditions on pages 19 and 20 of the packet, which came through the Planning Commission, and any associated site plans referenced within these conditions. Councilmember Paul seconded the motion.

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. Office and/or Church and associated accessory uses in the existing structure at a density of 18,007.30 square feet per acre or 32,053 square feet, whichever is less.
  - b. No overnight stays (11:00 PM to 6:00AM).
  - c. To prohibit any drug, alcohol, substance abuse, chemical dependence, and/or criminal rehabilitation programs.
2. To the owner's agreement to abide by the following:
  - a. To the site plan received by the Department of Community Development dated May 5, 2009. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
3. To the owner's agreement to provide the following site development standards:
  - a. Streetscape including sidewalks will be required at time of building permit or land disturbance permit, whichever occurs first, subject to the approval of the Public Works Department.
  - b. The owner/developer shall dedicate forty-five (45) feet of right-of-way from centerline of Glenridge Drive along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
  - c. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Roswell Road along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
  - d. Reserve for the City of Sandy Springs along the necessary property frontage of the following roadways, prior to the approval of a Land Disturbance permit, sufficient land as necessary to provide for compliance with the Comprehensive Plan. All building setback lines shall be measured from the dedication but at no time shall a building be allowed inside the area of reservation. All

required landscape strips and buffers shall straddle the reservation line so that the reservation line bisects the required landscape strip or buffer. At a minimum, 10 feet of the required landscape strip or buffer shall be located outside the area of reservation. All required tree plantings per Article 4.23 shall be placed within the portion of the landscape strip or buffer that lies outside the area of reservation.

Fifty-five (55) feet from centerline of Glenridge Drive

- e. To allow parking within the required minimum front and side yard setback (CV09-003).
- f. To reduce the twenty (20) foot side setbacks to five (5) feet (CV09-003).
- g. To allow for a parking lot without the required parking islands (CV09-003).
- h. To allow for relief from the requirement of planting a large shade tree every 6 parking spaces (CV09-003).

**Vote on Motion:** The motion carried 4-3, with Councilmember MacGinnitie, Councilmember DeJulio, and Councilmember Meinzen McEnery voting in opposition, and with Mayor Galambos voting in favor of the motion to break the tie.

**Ordinance No. 2009-12-58**

At this time the Council took a five minute break.

**(Agenda Item No. 09-317)**

11. **RZ09-004/CV09-012** - 5825 Sandy Springs Circle, *Applicant: City of Sandy Springs*, To rezone the subject property from MIX conditional to MIX for the development of a 5-story, 36-unit residential building with office and/or retail space, with concurrent variances

**Assistant Director of Planning and Zoning Patrice Ruffin** stated this is a rezoning request from MIX to MIX to allow for a five story thirty-six unit residential building with retail and/or office space and five concurrent variances. Staff has recommended approval conditional of the rezoning request and the concurrent variances. The Design Review Board heard this case at the October 13, 2009, meeting and recommended approval. The Planning Commission also heard this case on November 19, 2009, and also recommended approval subject to staff conditions.

**Mayor Eva Galambos** called for the applicant to come forward.

**Erik Lewitt, Plexus R & D, 914 Howell Mill Road**, stated he represented the applicant, Spring Gardens LLC. He and his client have worked with the City of Sandy Springs for the last year, and this application is a result of a series of negotiations and working with the Planning and Zoning Department. He stated he could answer any questions the Mayor and Council have.

Mayor Galambos called for public comments in support of the application. There were no comments from the public.

Mayor Galambos called for public comments in opposition to the application.

**Trisha Thompson, Sandy Springs Council of Neighborhoods**, stated she was not speaking in opposition right now, but she believed that the Design Review Board specified that the design as stated coming forward had to be changed before it came to the Mayor and City Council. The community would like to see the elevation that staff modified.

Assistant Director of Planning and Zoning Ruffin stated the Design Review Board did make a recommendation regarding architectural design, but it did not have to be revised as a part of application. They made some general comments for the developer to use when they come back for their building permit.

**Director of Community Development Nancy Leathers** stated they actually instructed the developer to bring this before the Design Review Board for review prior to submitting for a building permit to ensure that the design meets the City's standards before they actually presented building permit plans.

Mayor Galambos asked if it related to the Zoning.

Director of Community Development Leathers answered no.

Mayor Galambos closed the Public Hearing.

**Councilmember Karen Meinzen McEnery** stated she wants the applicant to replant to buffer standards. She asked which section that condition could be added to.

Assistant Director of Planning and Zoning Ruffin stated it would be condition 3d.

**Councilmember Rusty Paul** stated that conditions cannot be added until a motion is on the floor.

**Motion and Vote:** Councilmember Meinzen McEnery moved to approve RZ09-004/CV09-012 - 5825 Sandy Springs Circle with staff recommended conditions; with the addition of language to section 3d., requiring the applicant to replant to buffer standards. Councilmember Paul seconded the motion.

**Councilmember Doug MacGinnitie** asked if the requirement for the applicant to come back before the Design Review Board needs to be added to the conditions.

Director of Community Development Leathers stated it is not part of the conditions. She asked Council to add to the motion that the applicant come before the Design Review Board to review their site plans prior to submittal for a building permit.

**City Attorney Wendell Willard** stated to add the item as number four.

Councilmember Meinzen McEnery stated she would accept that amendment.

**Withdrawal of Motion:** Councilmember Meinzen McEnery withdrew her original motion. Councilmember Paul withdrew his second of the motion.

**New Motion and Second:** Councilmember Meinzen McEnery moved to approve agenda item no. 09-317, RZ09-004/CV09-012 - 5825 Sandy Springs Circle with staff recommended conditions; with the addition of language to condition 3d., requiring the applicant to replant to buffer standards; and with a new article number 4 requiring the applicant to bring drawings of elevations appropriate to the standards of the Community Development department back to the Design Review Board for approval before a building permit is issued. Councilmember Paul seconded the motion.

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. Thirty-six (36) residential units at a density of 84.71 units per acre.
  - b. Office, retail, and associated accessory uses at a density of 4,776.47 square feet per acre or 2,030 square feet, whichever is less.

- c. Maximum building height shall be five (5) stories.
2. To the owner's agreement to abide by the following:
    - a. To the site plan received by the Department of Community Development dated August 31, 2009. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
  3. To the owner's agreement to provide the following site development standards:
    - a. The owner/developer shall dedicate forty (40) feet of right-of-way from centerline of Sandy Springs Circle along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
    - b. Reserve for the City of Sandy Springs along the necessary property frontage of the following roadways, prior to the approval of a Land Disturbance permit, sufficient land as necessary to provide for compliance with the Comprehensive Plan. All building setback lines shall be measured from the dedication but at no time shall a building be allowed inside the area of reservation, except that a masonry entry wall shall be allowed in the area of reservation subject to an indemnification agreement filed by the owner/developer with the City of Sandy Springs.  
  
Forty-five (45) feet from centerline of Sandy Springs Circle
    - c. To allow a mixed use development on a parcel designated as Live Work Regional (LWR) with a total area of less than ten (10) acres (CV09-012 #1).
    - d. To reduce the required fifty (50) foot buffer and ten (10) foot improvement setback to a twenty (20) foot landscape strip along the east property line adjacent to property zoned A-L (Apartment Limited District) (CV09-012 #2). Said landscape strip shall be planted to buffer standards subject to the approval of the Sandy Springs Arborist.
    - e. To allow an encroachment into the required buffer along the east property line to allow for the removal and replanting of trees (CV09-012 #3).
    - f. To allow an encroachment into the required buffer along the east property line to allow for the removal and replanting of trees (CV09-012 #4).
    - g. To reduce the required front setback from twenty (20) feet to twelve (12) feet for the fifth story of the proposed building along the Sandy Springs Circle frontage (CV09-012 #5).
  4. The owner/developer shall present architectural elevations of the proposed building to the Sandy Springs Design Review Board for approval prior to application for a building permit.

**Vote on Motion:** The motion carried unanimously.  
**Ordinance No. 2009-12-59**

**(Agenda Item No. 09-318)**

12. **RZ09-005** - 6370 Powers Ferry Road, *Applicant: HSSW Powers Ferry Retail, LLC*, To rezone the subject property from MIX conditional to MIX to allow uses including restaurants and service commercial in the area known as Zone 6 of the subject property

**Assistant Director of Planning and Zoning Patrice Ruffin** stated the Powers Ferry Landing Development is a

large parcel with a good portion of the property at the corner of Powers Ferry and Northside Drive. It is the CVS building that is currently going up. The applicant is requesting to rezone the property to allow for restaurants and service commercial within the building that is currently under construction, which is in Zone 6 of the overall property. Staff is recommending approval conditional of the rezoning request. The Planning Commission heard this at the November 19, 2009, hearing and also recommended approval subject to Staff conditions amending Zone 6 to limit the restaurant use to 4200 square feet, which was requested by the neighbors of the subject property, and brought forward by the applicant.

**Jeff Dehner, HSSW, LLP**, stated he represents the applicant, HSSW Powers Ferry Retail, LLC. The CVS retail is going into the corner of the shopping center as a mixed use retail. This is the far reach of the old Powers Ferry Landing Office Park which was rezoned and redeveloped over the past several years and reaches down to Ray's on the River. The out parcel is part of Zone 6, which is the large fifty acre parcel that is zoned into six different sections. The applicant is requesting to rezone within the same classification from MIX conditional to MIX conditional to allow restaurant and service commercial uses to be incorporated into this existing three and a half acres of Zone 6. The applicant has worked extensively with the Riverview Palisades Neighborhood Association to work through some issues with respect to uses. All parties are satisfied with the agreement of the limitation to restaurant use at 4200 square feet. There have also been negotiations on additional limitations on hours of operation and some other items that are going to be put in a declaration that will be recorded against the property; and will further alleviate the neighborhood association's concerns. As stated in the Staff report, this use request is consistent with the City's plan and consistent with surrounding uses. He asked Council if they had any questions.

**Mayor Eva Galambos** called for public comments in support of or opposition to the application. There were no comments from the public.

**Councilmember Karen Meinzen McEnery** asked since the applicant has agreed to hours of operation with the Riverview Homeowners Association, should it not be included in the conditions of zoning.

Assistant Director of Planning and Zoning Ruffin stated staff didn't find it necessary to add the hours of operation, just the limitation on uses for that portion of the property.

Councilmember Meinzen McEnery stated the City does have hours of operation limitations detailed in the zoning conditions of other applications.

Assistant Director of Planning and Zoning Ruffin stated yes, we have.

Councilmember Meinzen McEnery asked why it wouldn't be appropriate to add the agreed hours of operation limitations into the conditions.

Assistant Director of Planning and Zoning Ruffin stated the only thing staff worked on with the applicant and the neighbors were the uses, not the hours of operation. Also, that is in their private agreement, so that is something they can handle between them.

Councilmember Meinzen McEnery asked if the hours of operations are in the conditions, would they not be enforceable by the City.

Assistant Director of Planning and Zoning Ruffin stated it would be.

Councilmember Meinzen McEnery asked if there were hours of operations limitations in other zoning conditions.

**Director of Community Development Nancy Leathers** stated generally the City does not do hours of operation in large commercial areas, because they operate in a way in which they need to be able to compete. If the business feels comfortable doing that with the neighbors, that is fine. In this case, that goes beyond what was found as an appropriate public interest in the issue.

Mayor Galambos asked if the neighbors have requested that this be a part of the conditions of zoning.

Mr. Dehner stated the neighbors have not requested this be a part of the zoning conditions. It has been a private agreement.

**Motion and Second:** Councilmember Paul moved to approve agenda item no. 09-318, RZ09-005 - 6370 Powers Ferry Road, Applicant: HSSW Powers Ferry Retail, LLC, To rezone the subject property from MIX conditional to MIX to allow uses including restaurants and service commercial in the area known as Zone 6 of the subject property. Councilmember Jenkins seconded the motion.

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. Retail/Office/Institutional/Service Commercial and accessory uses at a maximum density of 7,881.06 square feet of gross floor area per acre zoned, or a total gross floor area of 426,452 square feet, whichever is less, but excluding hotels.
  - b. Provide a minimum of 366,000 square feet of office calculated as part of the total floor area allowed in Condition 1.a.
  - c. No more than 513 total dwelling units, at a maximum density of 9.50 dwelling units per acre, whichever is less based on the total acreage zoned. (AM08-005)
  - d. Limit the height of the buildings, in the various Zones as shown on the site development plan referenced in Condition 2.a. and as specified in condition 3.a. (2004U-0024 NFC)
2. To the owner's agreement to abide by the following:
  - a. To the revised site development zone plan received by the Department of Community Development on January 30, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Resolution and these conditions prior to the approval of a Land Disturbance Permit. The applicant shall be required to complete the concept review procedure prior to application for a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy. (AM08-005)
3. To the owner's agreement to the following site development considerations:
  - a. To abide by the following zone development standards: (The zone development standards are taken from the "Amended and Restated Declaration of Covenants, Conditions, and Restrictions" signed by the developer and Riverview Palisades Neighborhood Association and the document was submitted to the County on July 5, 2005.)

Zone 1	This a no-build zone, wherein no new buildings or associated structures will be proposed for construction. Zone 1 is defined by the MRPA (Metropolitan River Protection Act) impervious setback zone of 150 feet, measured from the bank of the river, along the length of the riverbank. Within the 150-foot impervious setback, Zone 1 currently includes an approximately 6,268 square foot portion of an existing 13,452 square foot one-story restaurant with ground level parking as well as a portion of the parking lot associated with the building in Zone 3. The proposed development plan will remove at the time when development occurs as set forth in Zone 3 below, that portion of the parking lot associated with Zone 3, located south of Game Creek, which currently lies within the MRPA 150-foot impervious setback of Zone 1. In addition, to enhance the natural atmosphere of this zone and celebrate the river and creek as an amenity, pervious pedestrian
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trails, bridges and landscaping may be constructed with appropriate approvals. In addition to the foregoing provision for trails in general, the Applicant may install, construct and maintain a pervious pedestrian trail along the western boundary of Zone 1, from the southern boundary of Zone 1 to the right-of-way of Powers Ferry Road, linking the subject property with the National Park nearby, provided such trail shall be installed in accordance with the National Park Service trail standards.

Zone 2 With the exception of the current and proposed private driveway to access properties owned by Mort Epstein and Showcase Development and owner's right to relocate the existing access roadway connecting Zone 4 to Zone 3, Zone 2 shall be a no-build zone, wherein no buildings, accessory buildings or associated parking strictures will be proposed for construction. This area is currently undisturbed and includes the area delineated by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources 35-foot stream buffer along Game Creek, measured from the banks of Game Creek, along the entire length of the stream. The impervious development rights for this zone may be transferred to other areas of the site. However, to enhance the natural atmosphere of this zone and celebrate the creek as an amenity, pervious pedestrian trails, bridges and landscaping may be constructed with appropriate permits or variances and construction debris will be removed to the extent allowed by applicable authorities.

Zone 3 Zone 3 shall be limited to 10 detached single-family homes and 38 condominium units to be located in one building consisting of one parking deck with two separate condominium unit wings extending vertically from the parking deck. Except as provided in the preceding sentence, no other buildings shall be permitted in Zone 3. The condominium building shall have a height limit of 61 feet and the single-family homes shall have a height limit of 48 feet, both measured to the roof peak (including rooftop mechanical equipment) above average grade; provided however that average grade for the condominium building shall not exceed an elevation of 807 feet and average grade for the single-family homes shall mean the existing average grade of the entire site which shall not exceed 816 feet. Surrounding any rooftop mounted equipment located on the condominium buildings, owner/developer shall build a vertical structure so as to screen the equipment from a side view by homeowners on Riverview Rd. The structure shall be no less than the height of any rooftop mounted equipment and must be at least five feet in height. The structure shall be in a color so as to blend with the color of the roof. The units located on the southern side of Zone 3 adjacent to lots in the Riverview subdivision shall be single-family detached homes and shall have a rear setback of at least 20 feet from the property line or the minimum setback required by Fulton County, whichever is greater. Any units other than single-family detached homes shall have a building setback of 100 feet from the Riverview subdivision property line. All single-family units in Zone 3 shall have a minimum size of 2,300 square feet. The minimum size of units in the condominium building (which shall not exceed a total of 38 units) described above will be 1,900 square feet. If Zone 3 is redeveloped for residential use as contemplated herein, the existing office building will be removed. (AM08-005)

Zone 4 Allow (a) one condominium building, which will be the westernmost residential building in Zone 4, no taller than 84 feet (including rooftop mechanical equipment) above the grade of the existing road which runs along the western boundary of Zone 4 at its intersection with Powers Ferry Road, containing

no more than 300 units with structured parking located within the building perimeter such that the outside perimeter of the building consists of residential units and the deck is open to the perimeter of the condominium building only to allow a maximum of two points of vehicular and pedestrian access (no such opening may be located on the south side of the building unless residential units are constructed directly above the opening).

Allow (b) 125 townhouses with a height limit of 48 feet to the roof peak above finished ground grade and a minimum size of 2,000 square feet; and (c) either one condominium building of up to 40 units or 28 townhouse units to replace the Olive's restaurant building and its 128 space parking lot. In addition, the condominium building described in (a) above may contain accessory retail uses not to exceed a total of 10,000 gross square feet. In either case the maximum height for condominium building or townhouses described in (c) above will not exceed 48 feet to the roof peak from the foundation slab grade. Parking for the condominium building (if constructed on the Olive's site) will be located underneath the building. The condominium building described in (a) above will have an exterior elevation conceptually similar to that shown in the attached elevation by the Preston Partnership, dated May 5, 2005 and attached to the owner's amended declaration as Exhibit C hereof with respect to general facade detail and facade roofline articulation. (per document "Amended and Restated Declaration of Covenants, Conditions, and Restrictions" received by the County on July 5, 2005.) Also, in addition to the uses outlined above, the following three existing uses would be permitted to remain within Zone 4: 8,000 square foot restaurant (Olive's); and 13,452 gross square foot restaurant (Ray's); and 6590 Powers Ferry Road containing 4,465 gross square feet. (AM08-005)

Zone 5 Allow three office buildings of no more than 5 stories each, measured from existing grade, with an average floor-to-floor measurement of 14 feet, with an aggregate gross floor area of 275,000 square feet and one structured parking deck of no more than 3 levels above grade, with a floor-to-floor measurement of 10.5 feet.

Zone 6 Allow no more than one building that is up to, but shall not exceed, 4 stories measured from existing grade, with an average floor-to-floor measurement of 14 feet and an aggregate gross floor area of 81,000 square feet. Any other buildings within Zone 6 shall be limited to 3 stories in height, located between the existing 4-story building in Zone 6 and Powers Ferry Road, in the northeast corner of Zone 6, and may contain in the aggregate a maximum of 29,000 gross square feet (from which shall be deducted the size of the existing branch bank if it remains) which could be used for office/institutional, retail, residential, restaurant not to exceed a total of 4,200 gross square feet, and service commercial purposes and one structured parking deck of no more than one level above grade, with a floor-to-floor measurement of 10.5 feet. If a residential building is constructed, the number of units it contains will be deducted from the total of 525 residential units allowed in the aggregate for the entire Property. (RZ09-005)

- b. To construct all parking decks in a manner so that their architectural appearance is consistent with the style and materials of the associated office building(s).
- c. To construct all parking decks so that all sides shall be treated in an architecturally consistent manner.
- d. Baffle all lights on building and parking deck rooftops so that light is directed towards the ground and away from the residential development to the south.

- e. No signs shall be placed above the first floor elevation on any side of a building visible from the residential development to the south.
  - f. The emptying of dumpsters is restricted to Monday through Friday between 7 AM and 6PM.
  - g. No free standing cell or other types of free standing communication towers are permitted within the property. No communications antennae or other equipment shall be permitted if such equipment is visible from homes in the Riverview subdivision.
  - h. Delete the required 50-foot undisturbed buffer and 10-foot improvement setback along the south property line for Zone 3 as shown on the variance exhibit attached along the following property lines: South 52°26'53" West, 56.91 feet; South 56°45'09" West, 79.62 feet; South 26°47'33" West, 165.31 feet. (2004VC-0213 NFC).
  - i. All secluded walking paths that go through grassy or wooded areas within seventy-five feet of the open stream known as Game Creek shall be constructed with a pervious surface (i.e., pervious concrete, fine slate, fine shale, mulch, woodchips, or some similar material), as shown on Exhibit "B" received by the Department of Community Development on January 30, 2008. (AM08-005)
4. To the owner's agreement to abide by the following requirements, dedication and improvements:
- a. Dedicate at no cost to Fulton County along the entire property frontage, prior to the approval of a Land Disturbance Permit, sufficient land as necessary to provide the following rights-of-way, and dedicate at no cost to Fulton County such additional right-of-way as may be required to provide at least 10.5 feet of right-of-way from the back of curb of all abutting road improvements, as well as allow the necessary construction easements while the rights-of-way are being improved:  
  
55 feet from centerline of Northside Drive;  
  
40 feet from centerline of Powers Ferry Road;  
  
From the centerline of I-285 as may be required by the Georgia Department of Transportation.
  - b. The developer shall be responsible for complying with the requirements of the document entitled "Fulton County Driveway Manual" adopted by the Fulton County Board of Commissioners on May 18, 2005.
5. To the owner's agreement to abide by the following:
- a. Prior to submitting the application for a (LDP) with the Department of Environment and Community Development, Development Review Division, arrange to meet with the Fulton County Traffic Engineer. A signed copy of the results of these meetings will be required to be submitted along with the application for a Land Disturbance Permit or as maybe approved by Staff.
  - b. Prior to submitting the application for an LDP, arrange an on-site evaluation of existing specimen trees/stands, buffers, and tree protection zones within the property boundaries with the Fulton County Arborist. A signed copy of the results of these meetings will be required to be submitted along with the application for an LDP or as maybe approved by Staff.
  - c. Prior to submitting the application for an LDP, the developer/engineer shall contact the Public Works Department, Water Services Division, and arrange to meet on-site with an engineer from the Surface Water Management Program (SWMP), who is responsible for review of Storm Water

Concept Plan submittals.

- d. Prior to submitting the application for an LDP, the developer and/or engineer shall submit to the SWMP, through the Development Review Division, a project Storm Water Concept Plan or as maybe approved by Staff. This concept plan shall indicate the preliminary location of the storm water management facilities intended to manage the quality and quantity of storm water. The concept plan shall specifically address the existing downstream off-site drainage conveyance system(s) that the proposed development surface runoff will impact, and the discharge path(s) from the outlet of the storm water management facilities to the off-site drainage system(s) and/or appropriate receiving waters. As part of the Storm Water Concept Plan submittal, a preliminary capacity analysis shall be performed by the engineer on the off-site drainage system(s) points of constraint. The capacity analysis shall determine the capacity of all existing constraint points, such as pipes, culverts, etc. from the point of storm water discharge at the proposed development site boundary downstream to the confluence of the receiving drainage course at a point where the drainage area is at least ten times the proposed development site area and the next downstream drainage area having a drainage area of fifty acres or more. The critical capacity points shall be selected based upon the engineer's field observation, professional judgment, and limited field survey data. The analysis shall identify the downstream properties pre and post-development 100-year water surface elevations, and for any post-development water surface elevation increase exceeding 0.05 feet, the developer shall acquire the applicable offsite drainage easement to accommodate the 100-year storm flow through impacted properties. Where Fulton County has completed a model of the basin, it shall be used by the developer in the analyses.
- e. Where storm water currently drains by sheet flow and it is proposed to be collected to and/or discharged at a point, such that the discharge from the storm water management facility outlet crosses a property line, such discharge shall mimic pre-development sheet flow conditions or as maybe approved by Staff. A description of the method proposed to achieve post-development sheet flow conditions shall be provided as part of the Storm Water Concept Plan. Should the method to achieve sheet flow across an external property line be unsuccessful, the developer shall acquire an easement(s) from the point of discharge to a point down gradient at a live dry weather stream sufficient to contain the 25 year storm flow or other location as approved by the Director of Public Works. This condition will not apply when the storm water management facility is designed and approved to discharge directly to a stream or watercourse.
- f. A draft of the Inspection and Maintenance Agreement required by Fulton County Code Section 26-278 shall be submitted to the Department of Public Works with the Storm Water Concept Plan or as maybe approved by Staff.
- g. The Inspection and Maintenance Agreement shall provide that all storm water management/detention facility outlet control structures shall be inspected, photographed, and cleaned, if necessary, on a monthly basis, by the owner or as maybe approved by Staff. The Inspection and Maintenance Agreement shall require that the design engineer shall prepare an operation and maintenance guidance document, for use by the owner and/or any professionals retained by the owner, to plainly describe the basic operational function of the facility(ies), including a description of a permanent marker post(s) which shall indicate that the level of sediment which, if exceeded, requires sediment removal. The Inspection and Maintenance Agreement shall require an annual operation and maintenance report for all storm water management/detention facilities be prepared by a licensed design professional and submitted to the SWMP. The annual report shall include monthly inspections, photographs, and documentation of the cleaning of storm water management/detention facilities outlet control structure(s) as well as an operational assessment of the facilities indicating that they do, or do not, function as described in the design guidance document (described above), and if they do not, a description of the specific actions to be taken to allow the facilities to function as intended.

- h. The required Inspection and Maintenance Agreement shall be recorded with the Clerk of Superior Court prior to issuance of an LDP, Grading Permit, or Building Permit associated with the development or as maybe approved by Staff.
- i. The engineer/developer is required to submit, along with the application for an LDP, signed documentation verifying approval of the Storm Water Concept Plan or as maybe approved by Staff.
- j. Where paved parking areas (including access aisles) are proposed to exceed 5,000 square feet, the storm water management facilities shall be designed to reduce pollutants such as oil, grease and other automobile fluids that may leak from vehicles. A general description, or concept, of the storm water management facilities proposed to achieve the removal of such pollutants shall be submitted with the Storm Water Concept Plan. A detailed design of such facilities shall be included in applicable documents for a land disturbance permit or as maybe approved by Staff.
- k. With the application for an LDP, provide documentation (such as channel cross-sections, centerline profile, etc.) describing the geometry of those existing natural streams, creeks, or draws within the proposed development boundary which in the design engineer's judgment are at risk of erosion due to increased flow, provide a description of the basis utilized in judging areas to be at risk, and provide details on the Storm Water Management Plan of the post-development channel bank protection measures or as maybe approved by Staff.
- l. The developer/engineer shall demonstrate to the County by engineering analysis submitted with the LDP application, that the discharge rate and velocity of the storm water runoff resulting from the development is restricted to seventy-five percent (75%) of the pre-development conditions for the 1-year frequency storm event, up to and including the ten (10)-year frequency storm event or as maybe approved by Staff.
- m. Drainage from all disturbed areas shall be collected and conveyed to a storm water management facility provided as part of the development. The Storm Water Concept Plan shall identify any proposed areas with incidental and minor release of storm water not conveyed to such facilities, subject to the approval of the Director of Public Works. Plans for any land disturbance permit shall show all proposed drainage patterns for the proposed development after its completion. Any incidental release of unmanaged or untreated storm flows from any disturbed portion of the developed property shall be allowed only with the approval of the Director of Public Works. Other than minimal incidental flows shall be specifically approved by the Director of Public Works. Bypass flows will not be permitted except from undisturbed areas within a buffer or other protected easement. Final plans shall provide for collection, conveyance and treatment of all approved incidental flows from developed lots or parcels, individual residences or building structures or as maybe approved by Staff.
- n. Storm water management facility(ies) volumes shall be designed to achieve water quality treatment, channel protection, over bank flood protection and extreme flood protection, in accordance with the Georgia State Storm water Manual, except that the duration of release for water quality treatment shall be 48 hours or as maybe approved by Staff.

**Vote on Motion:** The motion carried unanimously.  
**Ordinance No. 2009-12-60**

#### **Use Permits**

**(Agenda Item No. 09-319)**

13. U09-004/U09-005/U09-006/CV09-007 - 805 Mount Vernon Highway, Applicant: Holy Innocents' Episcopal Church and School, Use permits to revise the existing Church, Private School, and Day Care Facility uses and property, with concurrent variances

**Assistant Director of Planning and Zoning Patrice Ruffin** stated the last time Council heard this application, it was recommended that it be sent back to the Planning Commission to allow the applicant further time to address some issues Planning Commission had raised. The applicant has done that. Staff has recommended approval conditional of the use permit request and the concurrent variances numbers one through twelve, and denial of variance number thirteen, with an alternate variance proposed as outlined in the conditions in the report. The petition was heard at the November 19th Planning Commission hearing and the Commission recommended approval subject to Staff conditions.

**Tatum, Hillman, Hickerson & Powell, LLP, Amy Hillman** stated she was representing the applicant, Holy Innocents Episcopal School and Holy Innocents Episcopal Church. She started by addressing what the application is not about. The application is not about an increase in enrollment, letting her see the plans, an increase in density of buildings on the property, or stadium lighting. What this master plan is about is good news. The master plan is about sensitivity to the currently approved master plan, sensitivity to neighborhood context, in terms of lighting and sound, improvements in parking, car pool, and traffic, green space sustainability, connectivity of open spaces, and development of a plan that supports the logical replacement of aged facilities. In response to community input with this application, several improvements have been made since the deferral several months ago. The applicant changed the height variance from fifty feet to forty eight feet, agreed to restrictions on delivery hours, and also agreed that the newly acquired Jones property, often called the Rock House, will remain residential in character, and substantially similar to the way it exists today. As of Sunday, there was a request for an additional condition in terms of rental of the Rock House. It is not the applicant's first choice but if it is a matter of Mayor and Council passing this application they would agree to some limited terms of rental. Related to sound, an extensive sound study was done on the property and hours of operation and holiday exclusions were agreed upon with Staff. In order to ensure that all of the sound improvements are adhered to by the applicant, compressive limiter devices were installed on the sound system. These devices function like a governor in a car, so that the sound is compressed and focused into the area of the stadium, and then limited. Even if someone turns the volume knob all the way up, it will not go above the established levels. A couple of things that we would like to be read into the record regarding the findings from the sound study. The resulting improvement should correlate to a subjective perception that the sound level impacts have been reduced to about half compared with those previously experienced. Also, the sound level settings were calibrated to Fulton County's decibel levels, the City of Sandy Springs has a different kind of ordinance, so there would be objective criteria to measure it against should the equipment age and be replaced. In terms of traffic, in addition to the comments from the City's Transportation Department, an independent engineer looked at the traffic and concluded that with the proposed improvements to the master plan, the area available for queuing for carpool will nearly triple for the preschool and more than double for the upper school without increasing student attendance on the campus. Therefore, traffic operations will be improved at these entrances, and delays on Mount Vernon Highway will be decreased. As a result of the proposed master plan, there will be no negative impacts to the adjacent street network and traffic is expected to improve. This is concurrent with the findings from Sandy Springs. If the applicant does not increase the student attendance at the school, traffic generation will not increase significantly due to the proposed changes. As such, there will be no increased demand on the surrounding transportation infrastructure. The revised site plan will significantly increase on site stacking for the Mount Vernon Highway entrances. These changes will improve operations and decrease delay at those entrances for through traffic on Mount Vernon Highway. The purpose of going over some of those traffic findings is to come to the variance the applicant has that the Planning Commission recommended for denial. It is a variance from a condition proposed by Staff, that the school and the church dedicate forty feet of right away alongside all the public roads that abut the school property. As a point of information, when Holy Spirit came before Council a year ago, they were only required to dedicate thirty feet. In the past Holy Innocents has dedicated property as it has needed to be done. In fact, they dedicated some property on the South campus for Sandy Springs without reservation. However, there are two reasons this is a detrimental condition for the applicant.

One deals with non-conforming structures and by pushing that right-of-way line, the setback line is pushed. The Staff has proposed a blanket type of variance to remedy that effect; which might work, but, it is constitutionally troubling to trade property for a variance. The second is an essential property right, and that is the right to exclude others from your property. It was admitted on the record at the Planning Commission hearing by the Transportation Engineer there will be some impact on parking areas, and the entrance to the tunnel. The right to exclude people that might be a danger to parishioners or to children is very fundamental and very important to the school. There is enough right-of-way out there, and we are asking for the Mayor and Council's indulgence on that in variance, and would hope that it is granted. She then asked Mike Collins to go over the site plan.

**Collins Cooper Carusi Architects, Mike Collins** stated he was representing the applicant. He went over the site plan with Council. The only change in the physical plan of the property would be the addition of the Jones property, which is a two acre parcel to the left. This is the approved master plan on record. The light colored buildings are existing buildings, the proposed buildings are darker. The master plan did not recognize the replacement of the wide structure in the middle of the campus known as the Riley Building. The proposed master plan contemplates consolidating five buildings in the center into three larger buildings. This will create more open space, improve car pool, and add parking; making it a more logical long term development plan for the campus. The addition of the Jones property presents opportunity to support that also. The variances that are being requested to support this are limited to four; the height variance that is applied only to the three primary buildings in the center of the campus well away from the neighborhoods, a sign variance for the second small sign adjacent to the Jones property, a parking tree variance that's related to the Jones property that basically saves large significant trees in favor of putting individual trees in the parking. They would be still obligated to meet the tree requirements, and then the right-of-way variance mentioned. He showed a drawing that represents the variances with the ones they agreed upon shown in blue. The other four are historical or for clarification. The height variance implication was studied and shows that the distance from the closest residential neighbors are a football field away from the applicant and the building is separated by another existing structure that is to remain. In terms of the Jones property, the intent is for it to maintain its residential character.

**Mayor Eva Galambos** called for public comments on behalf of the application.

**President of the Mount Vernon Parkway/Powers Ferry Neighborhood Coalition, Charles Kelly** stated he was in support of the application. He appreciated the way the applicant approached the various neighborhood coalitions, made them aware of the plans, and involved them in every step of the process. He commended them on their efforts.

**City Clerk Casey** stated the time had expired. He asked the Mayor and Council if they wanted to continue.

#### **Public Comments Cards - Did not speak**

**Paige & Mark Huff, 800 Marseilles Drive** stated they support the applicants redesign. They are the second most impacted residence within 425 feet of abutting.

**Tommy Davis, 5470 Powers Overlook Court** stated he was in support of the application.

**Peggy Farnham, 4775 Merlendale Court** stated she was in support of the application.

Mayor Galambos called for public comments in opposition to the application.

**Carol Matz, 120 Parc du Chateau**, stated she is an engineer representing other adjacent property owners near the school. She first thanked Mayor and Council for their diligence and hard work in making Sandy Springs a better City and a wonderful community to live in. The service level is superb compared to Fulton County. Very recently she received a fresh look from an independent master appraiser of the irreparable harm that will be done to the surrounding neighborhoods. This appraiser is used by Realtors such as Beecham and Harry Norman, and also

teaches courses on real estate appraisal at universities such as Georgia State. She read the conclusion from the appraiser to Mayor and Council. The conclusion read as follows: Holy Innocents as it is today is a sprawling type of campus that fits in the neighborhood as of now. The buildings are low and blend with the topography. If the height variance is allowed and tall buildings are built near Mt. Vernon Road, the character of the neighborhood will change to a commercial setting. Holy Innocents will have more of a commercial-mix use feel rather than the sprawling campus like atmosphere. That change will lead to a loss in value for many homes in the area. The streets that are sure to be negatively impacted are Parc Du Chateau, Devereux, Dupree, and Lamloise. These streets are within a close proximity to the school and will certainly be negatively impacted by the expansion of Holy Innocents.

Mrs. Matz stated the appraiser took a fresh look at each of the purported comparables that Holy Innocents provided. Riverwood, as it is now, would be comparable, because it sits back more than 200 feet and it is a low profile school. To be comparable to the expanded Holy Innocents it would have to be 48 feet in height and be setback within 60 feet from the property line. It has been mentioned that perhaps this is just going to be like the steeple across the street. What you have in terms of mass is over three million cubic feet on the new buildings. Of that three million, over six hundred thousand is above the 40 foot level. Basically, this is a change from a low density residential with a 40 foot height requirement, into a mixed use or commercial. The applicant also pointed out perhaps the new Mount Vernon Glen campus is a comparable. The analysis stated the new campus cannot be seen. If you drive on the private drive that's between the Methodist Church and the school you will see it, but if you drive along Mount Vernon Highway you will not see it. It is set back more than seven hundred feet. Sarah Smith, the annex that is under construction is purportedly comparable, is a two story school. Chastain park, another purportedly comparable, has over 360 acres of green space. Holy Innocents is unable to do that. Weber may in fact be comparable, but that has long been a commercial area. It used to be the site of the old AT&T building. Over 70% of the townhomes in that area are not occupied. That would be a sad outcome because we are becoming a de facto commercial multi use area and their comparables do not take that situation into account. They take into account existing areas that have long been commercial or multi-use.

The petition from the surrounding land and property owners would state: the massive scale of the applicant's proposed buildings include and are not limited to the three new upper school buildings and they would request that City Council deny the petition for the special use and for variance in the height of the proposed buildings, and that the applicant come back with plans that conform to the height requirements in which they have elected to build their campus; and further given the density of the existing buildings on campus there should be no variance in the new building set back requirements. Moreover, relative to the proposed structure parking above grade, it is not harmonious with the existing adjacent low density proposed or to residential neighborhoods.

**Councilmember Dianne Fries** asked the name of the appraiser.

Mrs. Matz answered Spurlin and Associates.

**Barbara Malone, 240 Cole Way**, stated she was representing the Sandy Springs Council of Neighborhoods. Consistency, precedence, these two words are so important for zoning cases for this wonderful city in which we live. They are what most residents expect. Without consistency and precedence, needless litigation and wasted tax payer's money could occur in this very significant recession. Let's see how these two words play out in the Holy Innocents special use permit application. First, let's address the school use of the PA system. Currently, Holy Innocents uses their PA system when they want. Twelve months ago Mayor and City Council listened to another application from Holy Spirits. The use of the PA system for that school is limited to games only. We would like to recommend that Holy Innocents be allowed to use their PA system between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, and for sporting events that the school is actually participating in outside of those times with a limit of 9:00 p.m. Holy Spirit, like Holy Innocents, is landlocked by neighborhoods. Second, she reviewed the request for a height variance for three buildings. The arts and music building is only two stories. Variances are only to be issued when the applicant can show hardship. Aesthetics is not a hardship. Just over a year ago John Portman was rightfully denied a variance to increase the height of his property. From the roadway the height of his

building would not have been seen, yet here with this applicant, at least eighty percent of the building will be seen from the roadway. They are requesting a variance of eight feet for a multi story commercial type complex. It is 700 feet in length, over two football fields in length, of massive building in the industrial style. That's a twenty percent increase in the height of these buildings. This will damage the low density residential neighborhood. Holy Innocents would have the height requirement disregarded for more than six hundred thousand cubic feet, which is probably one of the largest height variances ever granted by Fulton County. This will irreparably harm the residential character of the surrounding low density residential neighborhoods and home values in this area. In general, there appears to be an upward trend in the number of variances attached to applications. When ten or twenty variances are requested, surely, the application is not suitable for this land use.

**Laurie Robbins, 110 Lameloise Lane**, stated she lived adjacent to Holy Innocents School and church and adjacent to the baseball field and track. She is opposed to their variance application. It seems like it is putting ten pounds of potatoes into a five pound sack. The school never stops growing. This is the sixth variance application since she has lived in the area. On the school's website, the head master himself says they are currently planning for a second building campaign that will greatly enhance our cafeteria, upper school academic, art and music facility, we never stop growing. As a neighbor they feel there has to be an end. The neighbors are tired and burned out. Enough is enough. She stated she has problems with the hours. She doesn't know whether the governor will work or not because she has not heard it and they have not had any activities on the field since the governors were added. In the spring, she had roofers at her house and they had to pack up and leave at 7:30 p.m.; but, Holy Innocents was blasting a movie from their speakers until 10:30 p.m. The other issue is the height of the building. At the very first meeting the neighbors had with Holy Innocents, the architect said that the fifty foot height was for aesthetics only and it could be done within the forty foot limit, three stories.

Mayor Galambos closed the public hearing.

**Motion and Second:** Councilmember Paul moved to approve agenda item no. 09-319, U09-004/U09-005/U09-006/CV09-007 - 805 Mount Vernon Highway, Applicant: Holy Innocents' Episcopal Church and School, Use permits to revise the existing Church, Private School, and Day Care Facility uses and property, with concurrent variances. Councilmember Jenkins seconded the motion.

**Councilmember Rusty Paul** stated he may want to reopen his motion to discuss the issues for right-of-way and amend it after discussion.

Councilmember Paul asked Mrs. Hillman if there was some compromise concerning the right-of-way that the school and church would be willing to enter into without giving up the right-of-way; maybe, an agreement in the record that if the City ever needed the right-of-way, the facility would donate it, but the facility would hold title to it until that time.

Attorney Hillman stated it would depend on the extent of the request to donate it in the future, and that cannot be ascertained now. The problem that the applicant has with the right-of-way is that Georgia law and Supreme Court case law is very specific on what has to be done to take an exaction from an applicant. Even with something as mundane as right-of-way, there has to be a nexus to the impact. The City's traffic engineer and the independent traffic engineer both concluded that this plan is going to improve traffic circulation. Therefore, there is not a need for that exaction and giving up of property. In terms of the future, the school, on a case by case basis, has been willing to give up right-of-way; for example, the aesthetic improvements at the intersection of Mount Vernon Highway and Powers Ferry at Mount Vernon Parkway. The precedence is there, but the applicant can't write a blank check for it.

Councilmember Paul stated he understood and he is willing to put some limits on it and he would address some of the issues with Mr. Moore. While there is no plan to do anything with the property right now, the issue is, if the need were to arise in the future, the City might have a considerable outlay of resources in order to acquire the land. He is looking for some middle ground that will allow the City to access any right-of-way without triggering the

problems that were outlined in the presentation. He asked Mr. Moore and Mrs. Hillman if there was somewhere in between that would allow them to work together to address those issues.

**Transportation Planner Mark Moore** stated there is a way to work together on the issues. The only area where the City would impinge with the school is in a very small area where it does encroach by a matter of inches into the parking field. Typically, when the City acquires right-of-way, a quick claim deed is done. The easiest way to deal with this situation is to have some sort of easement language that would allow them full use and operation and the ability to secure it. Some of the arguments may be problematic. Right now there is property that is secured by the school and for the sole use of the school that goes under the entirety of the right-of-way of Mount Vernon Highway, as it currently stands in the tunnel. They do secure it and have sole access to it. There is certainly precedence, even on this site, for that type of activity to be used. He stated that he did not see there being any problem given the level of legal counsel the City has.

Attorney Hillman stated she keeps hearing that there are no plans to widen the roads. Georgia law requires that certain findings of fact have to be made in order to take property for public road purposes. None of those findings have been made in this case.

Mayor Galambos asked the City Attorney to respond.

**City Attorney Wendell Willard** stated roads are usually designated as being a type of road, such as a main artery or a secondary artery. The road then fits into a right-of-way requirement based on the type. He asked if this road fit into that situation.

Transportation Planner Moore answered yes, that is the situation.

City Attorney Willard stated that is the answer to her concern about future expectation. Also, it is a proper and permissible condition to have the developer of the property make their dedication of right-of-way as a contributor to additional traffic and usage of the roads. The courts recognize this as being an appropriate conditional right for a property owner to develop their property.

Mayor Galambos asked if that answered the questions.

Councilmember Jenkins asked if there was a certain type of road the City could take without plans for expansion.

City Attorney Willard stated the City can require a developer who is making a more intense use of the property to make a dedication because there will be additional traffic as a result.

Attorney Hillmans stated that was not the finding.

City Attorney Willard stated those are the things that can be considered.

Councilmember Paul asked if this is a fight worth fighting at this point and time.

City Attorney Willard stated he had no idea.

**Addition to the Motion:** Councilmember Paul added to the original motion to strike the right-of-way dedication issue at this point. Councilmember Jenkins seconded the motion.

Councilmember Fries stated the addition needed to be a little clearer. It is from section p-p. She asked what the Staff right-of-way recommendation would be.

Transportation Planner Moore stated one of the issues is the current right-of-way dedication in the zoning that's

been in force since back in the early '90's. There was a dedication requirement of 35 feet from center line and then a reservation of 10 feet beyond that to 45 feet from center line. To date, the entirety of that right-of-way was never dedicated to the County or the City. The question would be, does Council want to leave the right-of-way lines where they are now, which in some cases is substantially less than ever required for the last fifteen years, or preserve what they have been under, but have never dedicated, or go with the Staff recommended conditions.

Mayor Galambos asked if the City does not even have the total right-of-way that was dedicated years ago.

Transportation Planner Moore answered that is correct. He stated 40 feet is a magical number. Mount Vernon Highway is classified as functional classification and is minor arterial. Powers Ferry is a collector street. There is a typo; Mount Vernon Parkway in the Staff recommended conditions could be struck or should say Mount Vernon Parkway to thirty feet, because it is a local street and would not be the full 40 feet. The City's development ordinance requires, as a minimum right-of-way dedication on all streets of a collector or higher, 40 feet from center line right-of-way dedication. Staff has applied that in every case since then and it would have been required even outside of the zoning, if an application came in.

Councilmember Jenkins stated existing buildings will be impacted.

Transportation Planner Moore stated that is why the Staff recommended conditions include the variances from the setback locations, at specific locations, key to the master site plan, where it would be pierced so there is not a legal issue.

Mayor Galambos asked if some of the variances included in the application were variances to correct items that were previously incorrect.

**Director of Community Development Nancy Leathers** stated the school and church were developed over the years and the ordinances changed over the years. She stated she didn't necessarily think there were mistakes that had been made, but ordinances have changed. Each time you take it before Council you want to make sure everything is clear. The applicant has worked very well with the staff in trying to make everything clear.

Mayor Galambos stated the problems from the past that were discovered are trying to be corrected and the same thing would apply in terms of right-of-way that may not have been used. She then asked how many feet are being added in height to the existing structure.

Attorney Hillman stated it is eight feet over what is allowed.

Councilmember Paul stated he wanted to make an amendment to the main motion so it could be voted on separately and the main motion could stay intact.

Councilmember Fries stated he could not do so because some of the variances in the conditions are reflective because of the 40 foot right-of-way. If Council does not approve the 40 foot right-of-way, some of the variances aren't needed, and some would have to be pulled out.

Councilmember Paul stated if the amendment passes, then all those things will conform.

Councilmember Meinzen McEnery stated she has more questions before the vote.

Councilmember Paul stated he is making an amendment to the main motion to remove the right-of-way from the motion and then Council can adjust the main motion if the amendment fails or passes.

Mayor Galambos asked if there was a second to the amendment.

Councilmember Jenkins stated she was unclear what the amendment was.

Councilmember Paul stated his motion is that they vote on the right-of-way issues separately from the main motion.

Mayor Galambos stated he is approving the main motion and taking out the right-of-way. She stated that does not work.

City Attorney Willard stated he has come back with an amendment to the main motion. His first motion, the main motion, took away the right-of-way issue. Now, he is saying he wants to vote on the right-of-way issue separately, but he already removed it in the main motion.

Mayor Galambos asked could the right-of-way issue be pulled back and then have intact the previous motion which has all kinds of right-of-way issues and variances.

City Attorney Willard stated the motion for the Council's vote is a motion made by Councilman Paul that was seconded. The motion was to approve the conditions except for the last one which dealt with the right-of-way. The right-of-way has already been deleted from the motion.

Councilmember Paul stated that was the reason he is going back to pull out the right-of-way.

City Attorney Willard stated he needed to redo his motion because he had already deleted the right-of-way.

**New Motion and Second:** Councilmember Paul moved to approve agenda item 09-319, a use permit for 805 Mount Vernon Highway for the applicant Holy Innocents Church and School, and the use permits to revise the existing church, private school, and day care facility uses and property with the concurrent variances. Councilmember Jenkins seconded the motion.

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. To a maximum building height of 102 feet (U09-007).
2. To the owner's agreement to abide by the following:
  - a. To the site plan submitted to the Department of Community Development received September 1, 2009 (the "Site Plan"). Said Site Plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
  - b. To the architectural elevation drawings/renderings submitted to the Department of Community Development received September 1, 2009. With exception of the architectural treatment and aesthetics of the parking deck, the owner shall abide by the proposed building as shown on the aforementioned architectural elevation drawings/renderings.
  - c. To the Landscape Site Plan submitted to the Department of Community Development received December 3, 2009.
3. To the owner's agreement to provide the following site development standards:
  - a. Variance from Section 12B.8.C.2.a. of the Zoning Ordinance to reduce the required twenty (20) foot minimum yard adjacent to Public Streets to zero (0) feet (CV09-011)(Variance #1).

- b. Variance from Section 12B.5.B.1. of the Zoning Ordinance to reduce the required ten (10) foot landscape strip from the edge of the sidewalk(s) to a minimum of zero (0) feet (CV09-011) (Variance #2).
- c. Variance from Section 12B.8.C.4. of the Zoning Ordinance to reduce the required five (5) foot minimum side/rear yard to zero (0) feet (CV09-011) (Variance #3).
- d. Variance from Section 4.23.1 of the Zoning Ordinance to reduce the required five (5) foot side/rear landscape strip to zero (0) feet (CV09-011) (Variance #4).
- e. Variance from Section 12B.5.B.1. of the Zoning Ordinance to reduce the required ten (10) foot landscape strip from the edge of the sidewalk(s) to five (5) feet along the Sandy Springs Drive frontage (CV09-011) (Variance #5).
- f. Variance from Section 12B.4 of the Zoning Ordinance to allow an alternate streetscape design (CV09-011) (Variance #6).
- g. Variance from Section 4.3.5 of the Zoning Ordinance to allow privately owned structures to encroach on public rights-of-way (CV09-011) (Variance #7).
- h. The owner/developer shall dedicate as right of way all property contained within the landscape and sidewalk easement (D.B. 32693, PG 371) or Eleven (11) feet from the back of curb, whichever is greater, along the entire property frontage of Roswell Road, to the City of Sandy Springs as shown on the Zoning Right-of-Way Exhibit ("the Right-of-Way Plan") by Paulson Mitchell received December 2, 2009.
- i. The owner/developer shall dedicate forty-five (45) feet of right of way from the centerline of Hammond Drive R.O.W. along the entire property frontage or thirteen (13) feet from back of curb, whichever is greater to the City of Sandy Springs. In addition, the owner/developer will dedicate any additional area not included in the description of the previous sentence that is contained within the landscape and sidewalk easement (D.B. 32693, PG 371) as shown on the Right-of-Way Plan by Paulson Mitchell received December 2, 2009.
- j. The owner/developer shall dedicate thirty (30) feet of right of way from the centerline of Sandy Springs Place R.O.W. along the entire property frontage or thirteen (13) feet from back of curb, whichever is greater, to the City of Sandy Springs as shown on the Right-of-Way Plan by Paulson Mitchell received December 2, 2009.
- k. The owner/developer will update signalization at the intersection of Roswell Road and Hammond Drive to accommodate new roadway configuration, provide pedestrian access, and meet current city standards. All changes will be made per the approval of the Director of Public Works as part of the LDP.
- l. The owner shall provide additional sidewalk and landscaping along the western side of the proposed parking deck as approved by the Director of Community Development.
- m. If the commercial uses on the subject property require additional parking, as a matter of practice or vehicular overflow, the owner shall utilize the proposed parking deck by a method determined by the Director of Community Development.
- n. The owner/developer shall provide for architectural treatment and aesthetics of the proposed parking deck consistent with the multi-family and commercial portions of the building as shown on

the architectural elevation drawings/renderings submitted to the Department of Community Development received September 1, 2009 and indicated in condition 2.b. above.

- o. The owner/developer shall align the western vehicular ingress/egress (curb cut) to the proposed parking garage with the north/south section of Sandy Springs Place, creating a four-way-stop at the intersection of the proposed parking garage curb cut, City Walk Shopping Center eastern curb cut, Sandy Springs Place (north/south section), and Sandy Springs Place (east/west section) as approved by the Director of Public Works.
- p. The owner/developer shall construct the proposed apartments to condominium building construction standards.

Councilmember Paul stated that has the right-of-way included.

**Call of the Question:** Councilmember Fries called the question. Councilmember DeJulio seconded the question.

**Vote on the Call:** The motion to call carried unanimously.

Mayor Galambos called for a vote on the motion.

Councilmember MacGinnitie asked for clarification of the motion.

City Attorney Willard stated the vote is on the application submitted by the applicant with all the staff recommended conditions. The pages to reference are pages 32 through 38.

Councilmember Paul asked if he had to vote affirmative on his motion since he was the maker of the motion.

City Attorney Willard answered yes.

Councilmember Meinzen McEnery asked if it was possible for the Mayor not to recognize a Councilmember to ask questions before a vote is taken.

City Attorney Willard stated it is the right of the presiding officer to recognize anyone for the purpose of addressing a motion.

Mayor Galambos recognized Councilmember Meinzen McEnery to make a point of inquiry on facts.

Councilmember Meinzen McEnery asked staff if a dedication and reservation requirement had ever been waived.

Transportation Planner Moore answered he had no knowledge of that happening.

Councilmember Meinzen McEnery stated the applicant mentioned that for Holy Spirit the City required 30 feet.

Transportation Planner Moore stated that at the time of application that was designated as a local street.

Councilmember Meinzen McEnery stated District 6 has recently had situations where residentially zoned houses have been used for commercial purposes. She asked Council to consider an amendment to the motion to add a condition that the applicant has agreed to, that the use –

City Attorney Willard stated there was a motion to call the question.

Councilmember Meinzen McEnery stated her comments are not to amend the motion, but for the Council to

recognize that the applicant and the neighbors are concerned about the commercial use of the property known as the Jones property.

**Vote on the Motion:** The motion carried unanimously.  
**Ordinance No. 2009-12-61**

**(Agenda Item No. 09-320)**

14. U09-007/CV09-011 - 6024 & 6038 Roswell Road (SR9), Applicant: City of Sandy Springs, A Use Permit to exceed the maximum district height, with concurrent variances

**Assistant Director of Planning and Zoning Patrice Ruffin** stated this is a use permit to allow for a building to have a maximum height of eight levels over a basement level for a total of 102 feet. The building will be used as multifamily residential and retail restaurant having covered parking. There are seven concurrent variances being proposed. Staff is recommending approval conditional of the use permit and concurrent variances. The Design Review Board recommended approval of the case at the October 13th Design Review Board meeting with suggestions for the developer on the design of the building. Planning Commission heard the case on November 19th and recommended a sixty day deferral to allow the applicant time to provide additional information regarding the overall development.

**Carl Westmoreland, 1545 Peachtree Street**, stated after the Planning Commission's recommendation, on December 1<sup>st</sup> the applicant had a meeting with Staff and neighbors and significant modification to the plans have been made since then. Council initiated this application in an attempt to settle litigation, which is still pending. The previous application that was approved by Fulton County, before the City was incorporated, fell apart by virtue of its inability to accommodate a turn lane from Roswell Road onto Hammond Drive. This application does accommodate that. It still requires a special use permit for a height variance and various set back variances. It is not a rezoning. The applicant is still within the C-1 zoning classification applicable to the property. The use permit for height, which is a rendering on which the application is conditioned, looking from the intersection of Roswell and Sandy Springs. The property is obviously irregular, Roswell Road is located to the front; Burger King and Big 10 Tire are the cut outs to the South going toward Hammond Drive. The site drops in elevation about 30 feet from the back corner down to the Roswell and Hammond corner. While the height exceeds that otherwise permitted without a use permit, it is not exceeded at all points over the site. The average is 102 feet from grade as opposed to the 90 feet, which is otherwise allowed. In terms of the variances, those are really caused by a combination of the right turn lane from Roswell onto Sandy Springs, and the fact that Fulton County has owned for many years easements out in Roswell, which they had acquired many years ago to widen Roswell Road. Rather than maintain that the applicant is dedicating that property to the City, the important thing is the applicant is still accommodating the City's requirements for sidewalk and landscaping at every point except for the turn lane along Roswell Road, where they are accommodating the sidewalk. The applicant has street trees and pedestrian lighting on the building. Again, the Staff has found that the application meets the criteria for all of the variances, and the applicant doesn't have any problem with any of the Staff conditions, found on Pages 23 and 24. There were several traffic related issues which came up particularly in the meeting with the neighbors and staff. The applicant has made modifications to the plan in an attempt to address those. Mr. Moore obviously could respond and our traffic engineer is here as well for questions. There are improvements to the turn lanes onto Roswell Road, and from Roswell onto Hammond, which include upgrading the signal at Roswell and Hammond. The neighbors are concerned if the retail would have enough parking. There is a condition that states if the retail, along Roswell Road, has a use that requires more parking than the City's ordinance requires, they will work with Staff to accommodate that. The applicant will work with the Staff to accommodate that fact in the proposed parking deck. The applicant also agrees to align the entrance of the deck with Sandy Springs Place and include a four way stop on Sandy Springs Place. The applicant has also agreed to provide, subject to an agreement with the adjacent property owner, a pedestrian connection back into the City Walk retail. If the owner of that center allows, the applicant will build a sidewalk, and then a cross walk across the driveway to get to that center. Although this is not reflected in the conditions, if GDOT allows, the applicant will put signs and striping to keep people from blocking the intersection of Roswell and Sandy Springs Drive, since that was an issue of people trying to get out on Sandy

Springs Drive. Staff has recommended approval. The applicant has no problem with any of the Staff conditions. Representatives of Hanna Roker, the proposed developer, and the traffic engineer are available for questions.

**Mayor Galambos** called for public comments in support of the application. There were no comments from the public.

**Mayor Galambos** called for public comments in opposition to the application.

**Peter Tregar, 6069 Cedarwalk Lane**, stated his neighborhood is a fairly new community adjacent to the proposed project. He supports the sixty day postponement on a decision to approve this project with the requested variances. More importantly, he asked Mayor and Council to require the developer to comply with the current City of Sandy Springs master overlay plan for this area, thus reducing the excessive density of the project relative to the size of the property. It is a shame that an attorney had to be retained to fully understand the reality of this proposal. The letter from Holt Ney, their attorney, speaks to many of their concerns. There was clarification that this project was initiated by the Mayor and Council to resolve an ongoing litigation, and thus this proposal is being offered as a settlement in lieu of continuing litigation. This project is just too dense, overwhelms the property, creates hazardous traffic conditions, and is inconsistent in height and density with the master overlay plan for this district. To paraphrase a Planning Commissioner, if this was a new submission, the City would not be dealing with these same issues. This has a chance to be a signature building in scope and design and serve as a model for future development in this area. There is hope that within the proposed legal settlement there is room to do that, rather than just cramming in as many apartments and retail spaces as possible. Contrary to attorney Westmoreland's belief, the neighbors are not trying to stop this project, just make it better. Mayor and City Council have the ability to do this.

**Patricia Klein, Sandy Springs Council of Neighborhood, 145 River North Drive**, stated she would like to paraphrase Doug MacGinnitie, who at the Lakeside zoning said that this property should be zoned. This isn't the place to do it right now; things need to be worked out. There are still issues that need to be considered that have not been addressed. The retail parking is not suitable for the retail components. She has spoken to some major developers in Sandy Springs who have looked at this and said this is not going to fly. She does not want empty retail spaces on Roswell Road at this juncture. Further, they are asking that this be deferred in the correct manner that has been set forward by precedent and procedure. They are asking that it go back to the Planning Commission to work through and the sixty day deferral be granted. Mr. Westmoreland said he is asking for your vote tonight, but I ask that you uphold the dignity, responsibility, and the courtesy to our own Planning Commission and not abrogate their thoughts, comments and their authority.

**Howard Autsin, 6039 City Walk Lane**, stated he is one of Dr. Tregar's neighbors. He concurs with Dr. Tregar's comments about the proposed development, in particular the height of eight stories instead of the six stories specified in the City of Sandy Springs master plan. Adherence to those standards helped mitigate some of the other objections to this project, especially traffic and the lack of green space accessible by other than tenants in the building. The real issue is whether this project is a good beginning to the redevelopment of the Town Center of Sandy Springs or a suitable legacy for the historic first City Council of Sandy Springs. Traffic Engineer Mark Moore stated at the Planning Commission a few weeks ago, if this had happened under Sandy Springs, the outcome would have been very different. If this is built as is, the absentee investor and the out of town developer will do their thing and then leave us, the citizens of Sandy Springs, to live with the messy result. Rather than just approving a proposal that does not meet the City's standards and is crammed into an oddly shaped piece of property, grant the sixty day delay voted by the Planning Commission and begin to think outside the box. Give everyone time to get over just saying no, or we're stuck; be creative, and leave the City with a legacy it deserves.

Attorney Westmoreland stated he talked to the attorney that the opposition obtained and got a letter from him. He talked to Mr. Ney in some length and he made it clear their issues are essentially high density. They talk about traffic, which they see as a byproduct of that, but it is clear that to the extent that those are their issues, a sixty day delay is not going to bring them any closer together. The application is not to rezone the property. The applicant is

not asking for a change that allows more density. The applicant is staying within the C-1 classification, which has been on this property for a long time. The Staff has found, in very detailed manner, that the intent of the overlay district is met, and that the standards for a special use permit and the variances have been met. The applicant exceeds the call for green space stated in the Comp Plan. With regard to parking, they have alluded to the condition which the Staff added last week, and the applicant doesn't know what the retail uses will be. They are non residential, so they could be office uses. They could be something else that doesn't require very much parking. Their parking is at the upper end of what the City Ordinance calls for. Staff has gone beyond that in their conditions, stating that if there is a parking problem, Staff has the ability to come in and force them to provide more parking elsewhere on the property. The applicant is fine with that condition. He never said the neighbors were trying to stop this. It is settlement of litigation, which is very clear. The City was clear about it when it was initiated. But this has been extraordinarily above board. The applicant has been through every step of the process that would be required for any case that comes to Council as a result of litigation or not. Council has the discretion to do whatever they want with this. Given what the applicant had to work with and the issues this property had going back to the previous development; they have been working with Staff and come up with a good solution to accommodate everyone. The process has been followed with Staff, who has done a very good job of analyzing all of this, recommending conditions that they feel address traffic, setbacks, and any other issue that's been raised. There are people available to answer questions if you have them, but the applicant asks that Council approves this tonight based on the conditions that the Staff has recommended on pages 23 and 24. If there is ever a chance to try to work something out, the applicant is happy to do it. The issues that the neighbors have raised are not items that could be resolved in sixty days, or ninety days, or a hundred and twenty days from now.

Mayor Galambos closed the public hearing. She asked Council if they had question or if they wanted to make a motion.

**Councilmember Meinzen McEnerny** asked Mr. Moore if the dedication of right-of-way on Roswell Road is 55 feet.

Transportation Planner Moore answered yes, that is what is typically required for dedication on Roswell Road.

Councilmember Meinzen McEnerny asked if in this case it is 47 feet.

Transportation Planner Moore stated in this case it is less because 55 feet would be inside their building.

Councilmember Meinzen McEnerny asked Ms. Ruffin why this is not being considered a requirement in staff recommendations.

Transportation Planner Moore stated it is, and ultimately with the staff recommended right-of-way conditions, or right-of-way comments, we have gotten as close to that as possible. The reason it varies from it is, because they already have an approved land disturbance permit and an approved building permit from Fulton County that has been issued based on the site plan as it exists today.

Councilmember Meinzen McEnerny asked if the City was waiving the typical right-of-way.

Transportation Planner Moore stated they have done everything up to and including having the closest point of the right-of-way line go to the building face. It is as close as we can get to the right-of-way condition base line considering they already have a permit.

Mayor Galambos asked Mr. Westmoreland if the height is the essential item before Council.

Attorney Westmoreland stated it is the height and the variances.

Mayor Galambos asked if the height the applicant is seeking is over what was approved by Fulton County.

Attorney Westmoreland stated that the building is slightly shorter than what was approved by Fulton County. He was not involved at Fulton County. They apparently did not have a use permit. This building is shorter than the building for which the permit was issued. As Ms. Ruffin said, the height they have requested is 102 feet, and the ordinance allows 90. The building before that was slightly higher. He cannot respond to how Fulton County approved it before as he was not involved.

Mayor Galambos stated at this point under Sandy Springs ordinances, it is about ten feet.

Attorney Westmoreland stated it is twelve feet from average grade over what is allowed.

Councilmember Doug MacGinnitie asked Mrs. Leathers what the Fulton County height was.

Director of Community Development Leathers stated it was 110 feet that was approved.

Councilmember MacGinnitie asked if that was between the Sandy Springs ordinance and what Fulton County approved.

Director of Community Development Leathers answered no, this is eight feet less than what Fulton County approved without a use permit.

City Attorney Willard asked if it was also two stories.

Director of Community Development Leathers stated it is two stories less.

City Attorney Willard stated it was brought down two stories. The interior usage is higher per floor, but the stories are less.

Councilmember MacGinnitie asked if it is less than what Fulton County approved, but more than if they started from scratch under Sandy Springs.

Director of Community Development Leathers stated that was correct.

Councilmember Meinzen McEnergy asked if it was five stories.

City Attorney Willard answered it was eight.

Mayor Galambos asked what issues did the Planning Commission raise that may still be open.

Assistant Director of Planning and Zoning Ruffin stated the first item was potential inter-connectivity to the City Walk Shopping Center; the possibility of providing more green space by shifting the proposed density to a taller building; verification as to the appropriateness of providing twenty-seven spaces for the commercial component of the project; details of vehicular and pedestrian traffic studies; the architectural treatment and landscape screening of the proposed parking garage; a proposed streetscape design; and drawings matching the outlined variances.

Councilmember Jenkins stated that her understanding was that most of those issues have been worked out with the Planning Commission as of today.

Attorney Westmoreland stated after the first meeting that followed the Planning Commission meeting, the applicant tried to address all of those issues. They provided connectivity with a deck screen planning, moved the deck entrance down, and provided the sidewalk. All of those things have been incorporated and are provided in the packet.

Mayor Galambos stated the screening of the parking garage is one issue listed from the Planning Commission's outstanding issues. The screening of the building she looked at will require some evergreens, not just hardwood.

Attorney Westmoreland stated they have those between the hardwood and the building. It is actually on the landscape plan.

Mayor Galambos stated she didn't know if she was looking at the right building, but she could see an awful lot of the parking garage when the leaves are down, which is why she suggests that evergreens be added.

Attorney Westmoreland stated they are on the plan.

Director of Community Development Leathers stated in case there are any questions, the applicant worked with Michael Barnett, our arborist, on devising this plan. He has reviewed it and can answer any questions on how rapidly it will grow and how much coverage it may have.

Mayor Galambos asked if there were additional questions.

Assistant Director of Planning and Zoning Ruffin stated staff passed out revisions to the conditions. There is one typo in the highlighted section, and the City Clerk has a copy. Condition 3N would be modified to change the last sentence to say 2B instead of 1B, and condition O would be completely replaced to address the four way stop from the parking deck to the intersection with Sandy Springs Place.

**Motion and Second:** Councilmember Fries moved to approve agenda item 09-320, U09-007/CV09-011 - 6024 & 6038 Roswell Road (SR9), Applicant: City of Sandy Springs, A Use Permit to exceed the maximum district height, with concurrent variances, and with changes to Staff Recommended Conditions 3(n) and 3(o) as detailed by Ms. Ruffin. Councilmember DeJulio seconded the motion.

4. To the owner's agreement to restrict the use of the subject property as follows:
  - b. To a maximum building height of 102 feet (U09-007).
5. To the owner's agreement to abide by the following:
  - d. To the site plan submitted to the Department of Community Development received September 1, 2009 (the "Site Plan"). Said Site Plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
  - e. To the architectural elevation drawings/renderings submitted to the Department of Community Development received September 1, 2009. With exception of the architectural treatment and aesthetics of the parking deck, the owner shall abide by the proposed building as shown on the aforementioned architectural elevation drawings/renderings.
  - f. To the Landscape Site Plan submitted to the Department of Community Development received December 3, 2009.
6. To the owner's agreement to provide the following site development standards:
  - q. Variance from Section 12B.8.C.2.a. of the Zoning Ordinance to reduce the required twenty (20) foot minimum yard adjacent to Public Streets to zero (0) feet (CV09-011)(Variance #1).

- r. Variance from Section 12B.5.B.1. of the Zoning Ordinance to reduce the required ten (10) foot landscape strip from the edge of the sidewalk(s) to a minimum of zero (0) feet (CV09-011) (Variance #2).
- s. Variance from Section 12B.8.C.4. of the Zoning Ordinance to reduce the required five (5) foot minimum side/rear yard to zero (0) feet (CV09-011) (Variance #3).
- t. Variance from Section 4.23.1 of the Zoning Ordinance to reduce the required five (5) foot side/rear landscape strip to zero (0) feet (CV09-011) (Variance #4).
- u. Variance from Section 12B.5.B.1. of the Zoning Ordinance to reduce the required ten (10) foot landscape strip from the edge of the sidewalk(s) to five (5) feet along the Sandy Springs Drive frontage (CV09-011) (Variance #5).
- v. Variance from Section 12B.4 of the Zoning Ordinance to allow an alternate streetscape design (CV09-011) (Variance #6).
- w. Variance from Section 4.3.5 of the Zoning Ordinance to allow privately owned structures to encroach on public rights-of-way (CV09-011) (Variance #7).
- x. The owner/developer shall dedicate as right of way all property contained within the landscape and sidewalk easement (D.B. 32693, PG 371) or Eleven (11) feet from the back of curb, whichever is greater, along the entire property frontage of Roswell Road, to the City of Sandy Springs as shown on the Zoning Right-of-Way Exhibit ("the Right-of-Way Plan") by Paulson Mitchell received December 2, 2009.
- y. The owner/developer shall dedicate forty-five (45) feet of right of way from the centerline of Hammond Drive R.O.W. along the entire property frontage or thirteen (13) feet from back of curb, whichever is greater to the City of Sandy Springs. In addition, the owner/developer will dedicate any additional area not included in the description of the previous sentence that is contained within the landscape and sidewalk easement (D.B. 32693, PG 371) as shown on the Right-of-Way Plan by Paulson Mitchell received December 2, 2009.
- z. The owner/developer shall dedicate thirty (30) feet of right of way from the centerline of Sandy Springs Place R.O.W. along the entire property frontage or thirteen (13) feet from back of curb, whichever is greater, to the City of Sandy Springs as shown on the Right-of-Way Plan by Paulson Mitchell received December 2, 2009.
- aa. The owner/developer will update signalization at the intersection of Roswell Road and Hammond Drive to accommodate new roadway configuration, provide pedestrian access, and meet current city standards. All changes will be made per the approval of the Director of Public Works as part of the LDP.
- bb. The owner shall provide additional sidewalk and landscaping along the western side of the proposed parking deck as approved by the Director of Community Development.
- cc. If the commercial uses on the subject property require additional parking, as a matter of practice or vehicular overflow, the owner shall utilize the proposed parking deck by a method determined by the Director of Community Development.
- dd. The owner/developer shall provide for architectural treatment and aesthetics of the proposed parking deck consistent with the multi-family and commercial portions of the building as shown on

the architectural elevation drawings/renderings submitted to the Department of Community Development received September 1, 2009 and indicated in condition 2.b. above.

- ee. The owner/developer shall align the western vehicular ingress/egress (curb cut) to the proposed parking garage with the north/south section of Sandy Springs Place, creating a four-way-stop at the intersection of the proposed parking garage curb cut, City Walk Shopping Center eastern curb cut, Sandy Springs Place (north/south section), and Sandy Springs Place (east/west section) as approved by the Director of Public Works.
- ff. The owner/developer shall construct the proposed apartments to condominium building construction standards.

**Vote:** The motion carried 5-1 with Councilmember Paul voting in opposition.  
**Ordinance No. 2009-12-62**

At this time the Council took a five minute break

### City Property

#### (Agenda Item No. 09-321)

15. Consideration of the Request for Proposals Addressing the Operation of the Sandy Springs Tennis Center. This item was tabled at the November 17, 2009, City Council Meeting to the December 15, 2009, Meeting.

**City Attorney Wendell Willard** stated at the last meeting there was a motion made to table this matter for thirty days until this meeting. Part of that motion included language which was not clear as to what the intent was as to starting the process again. He felt the intent was to bring the item back before Council. Council has received the three top applicants approved by Staff and the various review bodies. Council should review those three applicants and act as you wish.

**Mayor Eva Galambos** stated this item was advertised for public comment. There will be ten minutes reserved for comments from the public and then Council will take action.

**Rod Warren, 740 Amster Green Drive**, stated he has known the facility, formerly known as North Fulton and is now Sandy Springs, for over twenty years. The management team has provided an excellent amount of quality tennis facilities for this area. He has played at many facilities across the State, and across the country, and the City has a true gem with the Sandy Springs Tennis Center. This is in part because of some of the expenditures that the Council has made, as well as the effective management that the current facility of Fulton Tennis Services has provided. He did not want to make negative comments about the other two applicants, but he has been to their facilities and Sandy Springs has a better tennis facility.

**Art Schultz, 49 Mt. Vernon Circle**, thanked the Council for allowing him to speak on behalf of the current management of the Sandy Springs Tennis Center. This has become quite a contentious situation and he appreciates the fact that the City needs to honor process, or there will be chaos. However, the process was created by humans here within the City. Sometimes humans make mistakes by not allowing for the wants and the wishes of the community. It's okay to admit the process that was created is flawed and to rectify it by voting the wishes of the citizens of Sandy Springs. Denial of that is what seems to have happened over the last several months. Taking a hard stance at this would not be in the best interest, long term, of our community or its leaders. In 1988, over twenty thousand of our citizens signed a petition asking the State Legislature to give us the rights to our own City. It was denied, but we kept struggling, because it was the right thing to do. Tonight there is another petition before the Council. Council has the opportunity to do the right thing. Hundreds of emails have been received and there is a large turn out here this evening. The scroll which is being unrolled contains hundreds and hundreds of people who play at the Sandy Springs Tennis Center. They want Council to keep things as they are. Don't fix what isn't

broken. Do the right thing. Keep the current management there, and the current management team in place.

Mayor Galambos asked for the names of the young ladies that unrolled the scroll.

Each young lady announced her name (inaudible).

**Joan Marcinko, 430 Margate Drive**, stated she is a tennis volunteer that has worked with ALTA, and USTA. She has held several community service events at the tennis center including, clinics for special needs children, raising money for the Humane Society, and cancer projects. She thanked the Barbics for the awareness they have given the community in terms of time and courts. She hopes that the support in the audience and the love for the current management team will help Council vote to keep them there.

**Melissa Nodwin, 225 Grogans Lake Pointe**, stated she is an active tennis player. She has played USTA and ALTA matches and played at public and private courts all across the city. The family atmosphere and the community involvement that takes place at the tennis center that the Barbic's have managed are immeasurable. It is qualities like these that are hard to come by. She hopes Council takes into account all the people, and all the citizens that are in support of the tennis center as it is today.

**Jim Griffith, 5365 Silver Creek Village**, stated he appreciates the fact that he has this type of an audience and appreciates the commitment that the current management team has for tennis and North Fulton for the last twenty years. He sent the Mayor and the Council a brief email going over the fact that Ivo and Martine are ambassadors not only for the City of Atlanta and the community of Sandy Springs, but also for the State of Georgia. They have done an outstanding job with the seniors and the juniors. Ivo Barbic dates back a long time. In 1973, he actually got his degree at Georgia Tech Institute in city planning. He has done an outstanding job for the community. Mr. Griffith hopes the current management team will stay in place.

**Terry Flynn, 5544 North Peachtree Road**, stated he is one of the tennis pros at Sandy Springs Tennis Center. He attended the last meeting and one of the things that he understood that was on the RFP was the applicants should have three years minimum management in running a public facility. At the last meeting some mentioned that they didn't see a difference between running a public and private tennis center. He has worked for both types and there is a huge difference. One of the biggest differences is with a private facility, there are dues every month and there is cash flow coming in every month. With the recent rains, there is no court fee income for the tennis center, so that is a major difference. As far as the three years minimum of facility management, one of the applicants had less than the three years. He assumes the three year number was put in there for a reason. When you are twenty-one years old you are allowed to drink, not when you are twenty and a half. When you are sixteen years old you can drive a car, not when you are fifteen. So that must have been there for a reason. He stated his daughter lives in Valdosta, Georgia and has for quite some time. He is very familiar with Valdosta and their tennis facility. Valdosta is one of the locations that one of the applicants listed for their experience. Valdosta per se does not have a tennis center. They have two parks, both of which have four tennis courts. There is no pro shop or reservations desk. He has spoken with the people at Valdosta Parks and Recreation and they stated they don't allow reservations as everything is first come first serve. They do have at one of the parks two restrooms and water fountains, and the other one has baseball fields. He is not sure how that translates into operating a tennis facility such as the one located here in Sandy Springs.

**Andre Barbic, 4053 Statewood Road**, stated he supports the Fulton County Tennis Services. There have been hundreds of e-mails in support of Fulton Tennis Services, and in response to that support there has been a suggestion that this process should not become a popularity contest. He could not agree more and the supporters feel the same way. He doesn't feel the people in the audience supporting Fulton Tennis Services are here only because Ivo and Martine are so popular. The same goes for those who sent hundreds of e-mails. Those e-mails were sent, and the supporters are here tonight, because for nearly twenty years Fulton Tennis Services has provided superior tennis programming and operations in Sandy Springs. Those hundreds of e-mails were sent by people who are rightly concerned that the City might be about to decide to change something that works the way that it should.

With all the other issues that we see facing the City, especially tonight, it's not really a good idea. For nearly two decades Fulton Tennis Services has worked to create and operate a model community tennis center with numerous adult and junior programs, national and international level tournament play, a partnership with the public elementary and middle schools to provide tennis programming for kids who otherwise wouldn't be able to afford it, and a home for numerous ALTA and USTA teams, some who have actually taken refuge from other clubs around town. FTS also provides a teaching staff led by Ivo Barbic, whose reputation as a tennis professional is second to none in the Atlanta area. A firm desk team that provides true customer service, which is a rarity these days, and ample availability of court time at affordable rates for the citizens of Sandy Springs. These are just some of the innovations and services provided. The people who play tennis in Sandy Springs understand and appreciate this, and they don't want to lose it. It really is hard to argue with that, because essentially we are talking about the customers. These are the customers. Some of these customers are comparison shoppers and they have played all over the state and in other states. They have played at Windward and Blackburn and still they prefer the Sandy Springs Tennis Center. The hundreds of e-mails are a plea and a request to preserve a community oriented tennis center that should be a model for public facilities throughout the country. This request is coming from people who know what they are talking about because they are educated about tennis. At the last meeting, someone rightly asked why there were no tennis experts on the evaluation committee. The supporters here tonight, and those sending in hundreds of e-mails are the experts. They are not supporting Fulton Tennis Services because they want them to win a popularity contest. All they want is the best tennis services possible, and they know that's what they are already getting. They know this because they have seen what others are offering and yet they keep coming back to Sandy Springs Tennis Center. Everyone here understands that a process must be used to select the best operator, but in order for that process to be complete let me suggest that it must take into account a nearly twenty year track record of vision, innovation, and superior service. The overwhelming community support that we are witnessing is a testament to the success of the current management team. Fulton Tennis Services has been the right fit for Sandy Springs for nearly twenty years, and it continues to be the best fit today. That's what the community is saying. He is confident that Council will keep that at the top of the list of considerations when voting.

**Public Comment Cards – Did not wish to speak**

**Mandy Kelly, 520 N. Harbor Drive**, stated she has played tennis at NFTC and SSTC for over five years and lived in Sandy Springs for over five years. She does not support the change in management for the tennis center. Ivo and Martine Barbic are very hard-working, honest, and have managed the tennis facility with great care since she has played there. She does not want some "fat-cats" tennis academy to overtake the community.

**End of Public Comment Cards**

**Dave Power, Windward Tennis Management**, stated he would first like to address some of the inaccuracies from the last Council session. It was put on the website that they were Windward Tennis Academy and that is incorrect. The bid was processed and submitted by Windward Tennis Management. They started the RFP process last May when they attended a mandatory meeting. They were told that the only person that could be contacted was Lynn Taylor in purchasing and that is all they have done in the past seven months. They have never had access to Council or any City employees. As a resident that is difficult, because they spend all of their time in Alpharetta. If this meeting was being held in Alpharetta with the City Council, they would have about 400 people in the audience. There are a lot of people in Alpharetta that feel like he is a very good pro, just like they mentioned for Ivo. They also have a top staff, which is why they submitted a bid. It seems since Windward was put on the website as the recommended bidder for the contract, it's become very politicized. The reason Windward put in the bid is because the City formed a public/private partnership with CH2M HILL, which gave them hope that it wouldn't be a political situation and that it would be taken on merit.

Mr. Power stated at the last meeting, it was stated Windward didn't have the qualifications. They would not have won the process if they didn't have the three year requirement. His partner did work in Valdosta where he had eight courts at Mackey Park. He also developed the Florida/Georgia Tournament, which is a big tournament that has about 300 entries and is still going on years later. They have owned Windward Lake Club since 1997. When they first started they had a few problems, because the club members had an opportunity to purchase club within ninety

days, but could not within that time period. The neighbors were up in arms that the facility went to a private group who was going to make money off of their neighbors, so there was a civil war going on within the community. Lawsuits were being filed by both sides. They are nestled in a neighborhood with 2,350 homes. They are a private club, but they are semi-private in the fact that all of their instructions are open to anybody. They are not like a country club. They have 900 members. There is a difference between public and private. In a private center people are paying dues and they expect more than what they would in a public center. They realize with a public center programs have to be provided based on the needs of the community. Not having worked in Sandy Springs, and not knowing all these people, they obviously don't know every need that is out there. They put together a proposal that was very all encompassing and tried to address the needs of the community. They feel like it was a very fair proposal and obviously the people on the committee also felt the same, because Windward was unanimously selected. In the process, Manney Guillen, the Sandy Springs Tennis Association President, was one of the eight people interviewed. Mr. Guillen also had somebody else from the association, so two of the eight were representing the Sandy Springs Tennis Association. Mr. Guillen was given as much time as he wanted and he did most of the questioning. Mr. Guillen asked, knowing that Windward had an academy, what if the number of courts was limited to ten or twelve. They responded, no problem. A good academy can be run on that if that's what is desired by the City and they will find other ways to evolve. They want to run a complete program that is not just about the juniors. They have 29 USTA teams and 43 ALTA teams, from senior, junior, mixed, men, and women. They do not have the fifty teams that Sandy Springs has, but the 29 and 43 are close enough. It shows they are capable of building teams, and also providing good instruction and coaching for their players.

Mr. Power stated they have to be good neighbors, because they are located within the community on ten acres. They have to service their members as they have four swimming pools and a 100 foot marina. They have members that are just marina only, swimming only, tennis only, or a combination of those. Their services have to be pretty wide range. They are actually a larger program than what is run in Sandy Springs, so it would be an easy adjustment to come in and run some of the programs, and then figure out what the needs are after talking to the residents.

Mr. Power stated they are not just juniors, which was an incorrect assumption. Some of the things they do on the adult side are a Christmas ornament exchange for their ladies on a Thursday morning with 60 to 70 in attendance; they do a ladies pampering day where local businesses are brought in to do massages and pamper the ladies; they run a women's academy with all adult women with 62 in attendance; they do an ALTA team appreciation party after each season; and a two day adult competition. These are things that are not being done at the current facility. This shows they are not just about juniors, which was told to Ronnie Young and his committee when they did the interviews. They are an all service, not just one or the other.

Mr. Power stated they do have an academy that has top players in the country, that's nationally recognized, and one of the largest in the Southeast, but they are not totally that. They are a full club, with a pro shop. They do everything that is being done at Sandy Springs, except it is done in house. They have their own maintenance staff that takes care of the pools, marina, and grounds, cuts the grass, and cleans. To step in at Sandy Springs would feel natural, because not only are they larger, they already do everything that is required. That is why they were selected by the committee.

Mr. Power stated at the last Council meeting it was suggested to postpone this for six months, but in the tennis industry you plan six months in advance. They are now looking at summer tennis camps. Any postponement past tonight would make it difficult to start in peak summer and try to get things off the ground. They were happy with the January 1st date because there needs to be 45-60 days to make a smooth transition. They felt they could make a smooth transition, even though they hadn't met a lot of the people in the facility. He has 40 years in programming and can create new programs depending on what the needs are. He is confident they can run a quality program for Sandy Springs.

Mr. Power stated they were completely transparent in their bid and that the City and CH2MHill would have read only ability on a day to day basis of all the figures, including the pro shop. There would be nothing hidden, they

would be completely transparent just like the City is.

Mr. Power stated all of their staff members are employees and they don't hire independent contractors. They offer health benefits and a simple IRA. They feel employees are more committed to the facility, are around more hours, and are not out independently giving lessons at another facility. They would also interview all the current pro's at the facility to see if they wanted to continue under Windward as employees, if they get the contract.

Mr. Power stated they offer a turnkey operation, which was in the bid. He feels that Sandy Springs has a great facility, which has been recognized. The whole city of Atlanta is envious of their situation. There was a good group of bidders and good competition. Ronnie Young and his committee had diverse options to choose from. They feel fortunate to have come out on top. It's in Council's hands to decide what they want Sandy Springs Tennis Center to be. They have proven they can take the facility to the next level.

**Councilmember Dianne Fries** stated she appreciated Mr. Power's comments. She knows this has been difficult for everybody, and there has been a lot of e-mails and things. Through this process we have realized that there is a difference in vision of Council on what we want to see as the future of the tennis center. Obviously, Council did not know how the community felt about the process, or what the community's vision is for the tennis center. It is a matter of does the community and City want to step it up and have growth versus more community play; do we add free play and tournament play; do we have kid's academies; or do we have events. She thinks the vision is cloudy with everyone.

**Motion and Second:** Councilmember Fries moved to extend the Fulton Tennis Services contract through December 31, 2010, and to take community input and the new Council's input and resubmit the RFP in July 2010, with the contract to be awarded by November 1, 2010, with a start-up date of January 1, 2011, to allow for transition time. The new RFP is to reflect the needs and desires of the community, staff and Council and should mirror the final contract that is awarded. The review committee should consist of the Director of Recreation and Parks, Finance Director and three members from the tennis world that are not affiliated in any way with any of the applicants. Councilmember DeJulio seconded the motion.

Councilmember Fries stated she certainly hopes that in going through this process, current Council, new Council, and the community get on the same page with a vision. Then let the process run its course. No one should lobby for an RFP process. She does not want to hear about lobbying on any of the contracts that this City is based on. Sandy Springs is an RFP city, and it's inappropriate.

**Councilmember Tibby DeJulio** stated he proposed last month that this be tabled, and he seconded the motion for a reason. Maybe he was a little bit negligent, but he didn't realize that this RFP was coming up before them last month until a few days before. He is also a little bit concerned with the amount of lobbying that was done by one of the parties. He does not have a dog in this hunt as he gave up playing tennis about twenty years ago, because he had tennis elbow and it wouldn't go away. He has been in the current tennis center one time, and met the current management twice. One time Mark Schultz took him there to show him what needed to be done. His dog in this hunt is the public of Sandy Springs. What he has learned from these three or four hundred emails is the passion in this community for tennis. He really loved the game when he played in Miami and he was so sorry that he couldn't play anymore when he hurt his elbow. As Dianne stated, Council and Staff need to get together and get input from the community as to exactly how we want this tennis center to be going forward. Like all of our parks and recreation programs, it is not for the tennis academy, Ivo, or whomever placed a bid; it is for the residents of Sandy Springs and how as the tennis players, as the residents of Sandy Springs, as the people who love the game get the most out of it. He thinks if Council moves forward and facilitates a contract right now, we have not put the input into it that we really need to do. That was his reason for seconding Dianne's motion. Together, the tennis playing community and the committee with independent tennis players can put together a better package that will serve the needs of our community. That is why he is in support of the motion.

**Councilmember Ashley Jenkins** apologized for not being at the last Council Meeting. Having been on the Sandy

Springs Tennis Association, in addition to Council, she is very aware of what goes on at the tennis center even though she does not play tennis. Based on the extensive emails received, this boils down to court time dedication. It comes down to how much time should be set aside for teaching and how much time should be set aside for play. That was very obvious after some of the e-mails and she did talk to Melissa to verify this. That is what Council and Staff wants the communities input on; how much time should be dedicated to play, USTA, and other events. Then input for teaching, because we do want teaching, for children, adults, or seniors. She stated it scares her that an RFP process is being turned over for politics over merit. She does not want to turn this into a political mess, because Sandy Springs is much better than that as a City. Going forward, let's keep it to the merit and what does the community want for the tennis center as far as how much play time versus how much teaching time.

**Councilmember Karen Meinzen McEnerny** stated her concerns with Council about any perception that our RFP process is open to political influence. She had an alternative suggestion, so the applicants had a fairer review of their proposals. However, it did not appear to get any significant support. The proposal was to keep the RFP and keep the bids, but to change the makeup of the committee along the lines of what Ms. Fries recommended in using third party people that are knowledgeable about the process that are not related. However, she does encourage the public to continue to stay in touch with their elected officials. She thinks the quality of Council's decision making is a function of hearing from the citizens. She encourages and supports the citizens continued involvement in the community.

Mayor Galambos stated there has been sufficient discussion and she asked for a vote on the motion.

Councilmember Fries clarified her motion. She stated November 1, 2010, is when the bid should be awarded with a startup date of January 1, 2011. If there is a change, this will give them a transition period.

Mayor Galambos stated there should be an orderly, organized process with community input into the various uses of the tennis courts, so the RFP can reflect what the community wants as a whole. She then asked for a vote on the motion.

**Vote on the Motion:** The motion carried unanimously.

### **UNFINISHED BUSINESS**

#### **(Agenda Item No. 09-322)**

1. Consideration of Approval of "DR-1858 Hazard Mitigation Grant Program Application" Contract

**Manager of Storm Water Services David Chastant** stated he presented the hazard mitigation grant program to Council last month during the work session meeting. This program allows the City to purchase properties that were flooded and damaged, using federal grant money. Because of the recent disaster, the federal funds equal 75% along with ten percent being offered by the state. It was his understanding during the work session that Council wanted to proceed with obtaining a consultant to look at the flooded properties, find out which properties could be purchased, and what the cost would be before the application is due on January 19, 2010.

**Mayor Eva Galambos** asked how much the contract would be.

Manager of Storm Water Services Chastant stated the current contract has a not to exceed price of \$59,400. The reason it is a not to exceed price is because some properties won't get a full application. If all of the 22 reviewed properties were included on the application it would be \$59,400.

Mayor Galambos stated this is on the agenda, but she feels they need to put some brakes on it. There are 22 properties scattered over various parts of Sandy Springs. There was one area that had several contiguous properties, but they are not adjacent to an access street for a good park. Some of the other properties are single parcels that would not be available for public use. The match on the FEMA money was around \$2 million for the ones on Pine Forest. She stated the \$2 million is not in the budget. She asked if the City wants to spend \$59,000 to

analyze the properties along with a \$2 million match for something that we are not sure we are going to buy.

**Councilmember Tibby DeJulio** stated he thought they were looking at which properties would likely be accepted by the federal government.

Mayor Galambos stated the City has to spend \$59,000 to do so.

**Councilmember Dianne Fries** asked why it was so expensive.

Manager of Storm Water Services Chastant stated that cost is to go to full application and they have to go out and do surveying. He added the surveying costs into the total estimated cost, which is why it went up.

Councilmember DeJulio asked if a preliminary estimate could be done on the properties without doing a total survey. Then Council could make a decision during the work session in January whether to move forward and which properties to include. He stated he couldn't see purchasing a house here and there just to bail someone out. He only wanted to consider properties that were contiguous and if the City could do something with the land.

Mayor Galambos stated there are some properties in this district that are contiguous, but they are not in an area that can be used as park space.

Councilmember Fries stated she thought there were properties that would qualify for this program and save the City money versus fixing the storm water issues. She finds it hard to believe the City has the top notch people in Georgia with CH2M HILL and staff can't compile a list of properties for Council to consider. It is hard to believe that the City has to spend \$60,000 to get an idea of which properties to look at.

Mayor Galambos asked if the consultants had to be certified by FEMA in order to make the recommendations or could they be CH2M HILL.

Manager of Storm Water Services Chastant stated it could be CH. The \$2 million match is a three year commitment. That's how long the City has to implement the project, so the funds could be spread out over three years. The \$60,000 is for the three different communities. Pine Forest has seven homes.

Councilmember DeJulio asked if the homes in Pine Forest are contiguous.

Manager of Storm Water Services Chastant asked Council to review the maps and stated they are not totally adjacent to each other.

**City Manager John McDonough** asked what the time line was.

Manager of Storm Water Services Chastant stated to take advantage of the funds the application has to be in by January 19, 2010. He stated there really needs to be a decision made tonight.

City Manager John McDonough stated the difficulty the Council has is that they have not prioritized their budget for next year. The City does not know what the revenues are going to be, and this is a three year commitment. Council needs to take that into consideration to potentially obligate \$1.5 million or \$2 million.

Mayor Galambos stated can't see spending \$59,000 on something when Council is not sure that we are even going to appropriate \$2 million dollars to then buy it.

**Councilmember Ashley Jenkins** stated she agreed with the Mayor. She then asked if there was any property that would be cheaper to buy versus doing a storm water fix.

Manager of Storm Water Services Chastant stated the property located at Granite Ridge Place might be a case. In that situation the system downstream of that is undersized, and rather than tearing up the entire road, constructing this pond in this particular spot would improve the drainage downstream.

Mayor Galambos asked what would be the match on that.

Manager of Storm Water Services Chastant answered \$120,000.

Mayor Galambos stated that was doable.

Councilmember Jenkins stated to leave it at that. The City is not going to have \$2 million to spend to buy random pieces of property.

Councilmember Fries added the City would have to tear down the house and maintain it, but still not be able to use it.

Councilmember Jenkins stated she agrees if there is an instance where it is cheaper for the City to buy the house and tear it down, rather than to do the actual storm water fix.

**Councilmember Karen Meinzen McEnerny** said that would be Granite Ridge.

Councilmember Fries asked if the item marked in red on the map was the only potential participant and the others were just flood properties.

Manager of Storm Water Services Chastant answered no. They did not report flooding to the City, but he included them in the motion.

Councilmember DeJulio asked if CH2M HILL could do the survey.

Manager of Storm Water Services Chastant stated they could, but there is not enough man power.

Councilmember Fries stated she wanted staff to narrow it down and they just did.

**Motion and Second:** Councilmember Jenkins moved to approve agenda item 09-322, Approval the process of the DR-1858 Hazard Mitigation Grant Program Application for the Granite Ridge Property only. Councilmember Fries seconded the motion.

Councilmember Fries asked if there are any other properties to include in the study.

Councilmember Jenkins asked what other properties fall into the same category as Granite Ridge.

Manager of Storm Water Services Chastant stated none of the other properties fall into that particular category. They do have storm water issues. All these homes were flooded.

Councilmember Fries stated she was referring to Storm Water issues or piping that needed to be fixed.

Manager of Storm Water Services Chastant stated Granite Ridge is the only one that is under sized.

Councilmember DeJulio stated he wanted to discuss this item a little more. There were people in the audience from Powder Horn that had to be rescued twice by the fire department. He thinks those houses need to be looked at also.

Councilmember Fries stated she doesn't think it is the City's responsibility to buy people out from their purchase.

Councilmember DeJulio stated he agreed with her, but it is the City's responsibility to look at this and see if they fall into this category.

Mayor Galambos stated she would support Councilmember DeJulio's position if the property owners were willing to pay our \$2 million.

Councilmember DeJulio stated the City is not paying \$2 million; the government is paying \$2 million.

Manager of Storm Water Services Chastant stated the \$2 million is the City's match. He stated if the City went with all of the properties, federal costs would be around six million, and the City would be paying two million over three years.

Mayor Galambos said she would support buying every single one of the properties if they were willing to pay the local match.

Councilmember Meinzen McEnery stated except for Granite.

Mayor Galambos stated yes.

Councilmember DeJulio stated the properties listed are not going for prices like they would have gone for two, three years ago, because they do have these serious problems.

Manager of Storm Water Services Chastant stated the properties get priced pre-disaster. They are assessed at the value before the flood.

Councilmember DeJulio stated they get the value of the home before the disaster.

Manager of Storm Water Services Chastant answered yes, that's the assessed value. Then the federal government would pay seventy-five percent, the state would pay ten, so the City would be left with fifteen percent, and that can be made up by the citizens or the City could pay for it.

Mayor Galambos stated if the City undertook the expense for the consultant to do the survey and then the citizens paid the local match; she would move forward.

**Councilmember Rusty Paul** stated he went to school in Alabama. He stated 15% of \$6 million is \$900,000.

Manager of Storm Water Services Chastant stated he calculated the cost on 25%. This is done to cover costs that are unexpected. The total is \$8 million, the federal government pays \$6 million and the City pays \$2 million.

Councilmember Jenkins stated her original motion still stands. The reason she proposed the original motion is because if the City is going to have to spend money on anyway, it makes since. The City is not responsible for the flooded properties.

Councilmember Fries stated she still seconds the motion.

**Councilmember Doug MacGinnitie** asked how much the study would cost for just one property.

Manager of Storm Water Services Chastant answered around \$14,000.

Councilmember Doug MacGinnitie asked were those funds available in the budget.

Manager of Storm Water Services Chastant stated he had a savings in his budget due to the money he did not spend on the flood study.

Mayor Galambos stated the money is in the budget and we don't have to appropriate extra money.

Councilmember Paul asked what was being studied.

Councilmember Fries asked what could cost \$14,000 on one home.

Manager of Storm Water Services Chastant stated there is one building, but there are four homes there.

Councilmember Fries stated she thought it was only one home.

Councilmember Jenkins stated yes, it is one on Granite.

Manager of Storm Water Services Chastant stated it is one neighborhood with four residents in the building.

Councilmember Paul asked if the criteria that have to be studied have been delineated by a member of Congress and three or four federal agencies.

Manager of Storm Water Services Chastant stated yes; there are 47 criteria that they have to respond to.

Mayor Galambos stated this is like all the other stuff. State and federal criteria, mandates, and everything costs way too much, but that's what we live with.

**Vote on the Motion:** The motion carried unanimously.  
**Resolution No. 2009-12-91**

### **NEW BUSINESS**

#### **(Agenda Item No. 09-323)**

1. Resolution to establish a fee for the transfer of a license as provided by Chapter 6, Alcoholic Beverages, Article II, Section 6-67 of the Code of Ordinances of the City of Sandy Springs

**City Attorney Wendell Willard** stated there are times when there may be a need for a change of the name of a license, other than when there is a sale/purchase arrangement. It may involve the State, a change of parties in a limited partnership, or the owner of the facility has a change of his manager. The City has always had problems about what to charge in those cases. Staff felt the need to establish certain circumstances as identified for the four times it has happened. The fee would be a fifty dollar processing cost. He recommended this change to Council.

**Councilmember Fries** asked what the average cost for this is from other Cities.

City Attorney Willard stated there was not a similar cost to look at.

Councilmember Fries stated the cost for servers was increased and she got calls from every server in the City.

City Attorney Willard stated that was based on a cost analysis. This involves nothing more than a change of paperwork to change one name to another on the license.

**Mayor Eva Galambos** asked if Councilmember Fries questioned that it was too much.

Councilmember Fries stated she was just wondering if the City was inline.

City Attorney Willard stated it is a reasonable amount for what has to be done time wise.

Councilmember Fries asked if other City's charged for this.

City Attorney Willard stated a lot of other Cities charge a full fee. Staff was troubled with that and felt the charge should not be so high.

Mayor Galambos asked if this would be a reduction of what people pay.

City Attorney Willard answered yes.

**Motion and Vote:** Councilmember Jenkins moved to approve agenda item 09-323, a Resolution to establish a fee for the transfer of a license as provided by Chapter 6, Alcoholic Beverages, Article II, Section 6-67 of the Code of Ordinances of the City of Sandy Springs. Councilmember MacGinnitie seconded the motion. The motion carried 5-1, with Councilmember Fries voting in opposition.

**Resolution No. 2009-12-92**

### **REPORTS AND PRESENTATIONS**

a) Mayor and Council Reports

**Mayor Eva Galambos** stated she had one thing to bring before Council. It is a resolution that the Mayors of North Fulton cities are all asking their cities to approve. The resolution asks that Fulton County stop using our general fund revenues to pay for things in the special service district of South Fulton.

**Councilmember Fries** stated that item was on the consent agenda and approved.

b) Staff Reports

### **PUBLIC COMMENT**

**Elna Sheetz, 145 North Mill Road**, stated she has been resident of Sandy Springs for twenty-six years and she is employed by Community Action Center. Her home at 145 North Mill was taken off the listing of those Council was looking at because it was not contiguous. However, her house has flooded three times in six years. She personally feels that one of the reasons that it had started flooding is because the zoning of the Blessed Marsh Creek, now cluster homes, has smaller blocks than the zoning requires. Also, the storm water comes into her property. When it does rain, her house is the convergence of Marsh Creek and another unnamed creek. She had two and a half feet in her home and three and a half in the garage. Her property is not listed on what Council reviewed tonight, because at the last session all single properties were excluded. She would be willing to pay the 15% match to be part of the case study, because her house is uninhabitable right now. She would like to have that consideration.

**Councilmember Ashley Jenkins** stated one of her constituents is having the same problem because there is a condo complex permitted above her and it is all running into her house. Her house is totally unlivable as well. But that is not the issue Council is talking about here. She stated she would be happy to get David and Jim out there to see if her property qualifies. She has consulted with legal to see if her constituent can get on the list, and they cannot. She is going to have to file their own individual lawsuit against the County and against the developer of the upstream property, because the developer did not put in a large enough pipe. Apparently, the pipe should be sixteen inches and it is only ten inches, so all the water is just gushing through the downstairs of the home. It is very frustrating. But it is probably an individual lawsuit between you and whoever the owner of the property is that is dumping water into your home.

**Mayor Eva Galambos** asked if Mr. Chastant was still available. She asked if Mrs. Sheetz property was on the list for consideration.

**Manager of Storm Water Services David Chastant** stated the property was on the list presented during the Work Session.

Councilmember Jenkins asked if it was a storm water issue.

Manager of Storm Water Services Chastant stated they live in the flood plan.

Mayor Galambos stated Mrs. Sheetz is stating she is willing to pay the local share, which is the point she is trying to make.

Mrs. Sheetz stated her next door neighbor stated he would upkeep the property.

**Councilmember Tibby DeJulio** asked if Council could allow the homeowners to pay the 15%.

Manager of Storm Water Services Chastant answered yes.

Councilmember DeJulio stated they are taking the before flood value and marking it down.

Manager of Storm Water Services Chastant answered yes.

Councilmember DeJulio stated they do this because they realize their property has decreased in value.

Manager of Storm Water Services Chastant state it is not typically done, but it can be done.

Mayor Galambos asked if anyone would be willing to do another motion that would include this.

Councilmember Jenkins stated she could reopen her motion.

**Councilmember Dianne Fries** asked if Council is opening up the door for people who aren't in the audience.

Councilmember DeJulio stated if there are people who are willing to incur the cost and the City pays nothing, there isn't a reason not to do it.

**City Attorney Wendell Willard** stated the agenda needs to be amended to this. It may be better to give consideration on the other motion.

**Councilmember Rusty Paul** stated Mrs. Sheetz has made a generous offer. He asked if in the next thirty days they could allow people who are willing to pay the 15% come in and talk to Mr. Chastant and then bring the list back before Council at the first meeting in January.

City Attorney Willard asked Mr. Chastant to discuss his time limitation.

Manager of Storm Water Services Chastant stated the applications have to be in by January 19, 2010. The consultant needs to start work immediately.

Councilmember Jenkins stated there is a Council meeting January 5, 2010.

Mayor Galambos stated the consultants need to get the work done by the 19<sup>th</sup>.

Councilmember Jenkins stated since Council will approve the Granite Ridge property, can the consultants go out to the property now and Council vote on it January 5<sup>th</sup>.

City Attorney Willard stated the report has to be filed with the application.

Mayor Galambos asked if the agenda could be changed.

City Attorney Willard stated the agenda could be changed and the current motion could be reconsidered.

Councilmember Paul stated everyone voted in the affirmative, so any Councilmember can move for reconsideration.

**Councilmember Meinzen McEnerny** asked to let the other people in the audience speak.

Mayor Galambos called for other public comments on this issue.

**Jamie Walker, 510 Pine Forest Road**, stated the overall sentiment of what they are trying to do is not to be bailed out of a bad situation. The houses were built in the 1960's with no flooding in the neighborhood until 2004. His house has flooded twice in the past five years, which has become a concern of the property value in general. The main issue with his property is his street is the lowest street in the neighborhood. There are two streets that run behind him parallel, Brookfield and Carolwood, and neither one of those streets have any sewers or storm drains. The drainage tiers down to his street and the majority goes into his back yard and his neighbor's back yard. There is a wetland horse field behind the properties where the drainage has been diverted over the last ten years from a buildup of a large house behind him. There has been change to topography that has moved the drainage more towards his property as opposed to Nancy Creek, where the flooding kicks back to him. His personal street was built to code in the 1960's. They went through the process, five years ago, to figure out how to remediate all the problems and flooding going forward from 2004. What was found by some officials was that the storm drains are half the size of the capacity of what they are supposed to be to handle the drainage of the number of houses and the drainage that his street receives. This causes a back up and a lot of the drain water on his street, which can't be handled pools until it explodes into a large flooding area for twenty houses at the end of the street. Their initial petition was submitted to Council in October for all properties to be eligible for green space consideration for the FEMA for green space allowance. It was not for personal gain, but for the community and resale values around us. No one wants to buy houses on flood plains in our area because of the recent flooding. A number of houses are now turning to rental properties because they can't sell because of the recent flooding.

Mayor Galambos asked is his house and those in the neighborhood part of the designation in the flood plan that is being discussed.

Mr. Walker asked if it is on the flood plan.

Councilmember Fries asked for his house number.

Mr. Walker responded 510 Pine Forest Road.

Councilmember Fries stated his house was on the list.

Mayor Galambos asked if he and his neighbors would be willing to pay the local match if the City moved forward with the study and FEMA comes across with the federal match.

Mr. Walker stated personally, for himself, he would be more than willing to match 15% if the City is going to get the application to FEMA to give them the chance to offer their 75%. They would be completely on board, and grateful for the City's ability to help support them, and to try to find a way to better the area. The properties that

get the most water are his property and probably the property next door to him. The community is very young. They have sixty or eighty homes with families with small kids, and the green space could serve as a great little park for the children in the neighborhood to play.

Councilmember DeJulio asked if any of his neighbors were in the audience.

Mr. Walker answered yes.

Mayor Galambos asked the City Attorney if the program would allow the citizens to take 15% less on the funds.

City Attorney Willard stated he was not sure how the program works and Mr. Chastant would have to explain it to him, whether it is permissible to do it as a fifteen percent reduction, or an exchange of checks. Whatever means by which it goes through, the City can work if there is a permissible arrangement under the federal laws and regulations to do it. If you want to consider anyone with that nature of problems, the motion can be redone. He stated he could draft a motion to take care of it.

Mayor Galambos asked if this could be done with a proviso that the City would do this if it is permissible.

City Attorney Willard answered yes. Council does not have to make a decision now. It will be part of the arrangement made with the property owners once it goes through the process and is approved by FEMA.

Mayor Galambos asked Councilmember Jenkins if she was willing to reconsider her motion.

Councilmember Jenkins answered yes, but added the cost is back up to \$56,000.

City Attorney Willard stated it will take a full study of the properties recommended by David Chastant.

**Motion and Vote:** Councilmember Jenkins moved to reconsider agenda item number 09-322. Councilmember Fries seconded the motion. The motion carried unanimously.

**Motion and Vote:** Councilmember Jenkins moved to approve agenda item 09-322, the expenditure of funds to perform the study as suggested by Public Works in the approximate amount of \$56,000. From that report, the properties which are involved, except for the Granite Ridge Place property from which we are not looking for participation at this time, but for all other properties, the City will agree to proceed forward with the FEMA program for acquisition of these properties subject to the agreement of the property owners to be responsible for that portion of the payment required to be made by the City as a condition of the City's participation. Councilmember Fries seconded the motion. The motion carried unanimously.

**Dave Power, Windward Tennis Management,** stated as an outsider looking in he was trying to figure out what happened with the process. The process seemed to be going well until Council got involved. He asked if there was any fraud found in the process.

**City Attorney Wendell Willard** stated he was unaware of any fraud in the process.

Mr. Powers stated Council denied due process. They spent seven months, hours and hours on their bid. He has great tennis expertise. Council is going to have a hard time finding three people that don't know one of the three top candidates. Nobody in Atlanta would be able to, because they are well known. Council will have to go outside to find someone and they will probably have fewer credentials.

Mayor Galambos stated the City would be happy to entertain his RFP when the time comes again. The current process is closed.

Mr. Powers stated the problem is that it is now public record, so how can it be a fair process the next time for the three people that were finalists, or any of them, because the City has all of the bids. Anybody can get the bids through the open records process. It is extremely disappointing.

**Public Comments – Did not wish to speak**

**Douglas Sheetz, 145 North Mill Road**, state he wanted to request inclusion of his property in the FEMA grant application.

**Jeanette McConchie, 3655 Newport Bay Drive**, stated she was the executor of the property located at 520 Pine Forest Drive and wanted to be included in the FEMA grant application.

**Elizabeth MacArthur, 500 Pine Forest Road**, urged Mayor and Council to approve DR-1858 “Hazard Mitigation Grant Program Application.” She has lived at 500 Pine Forest Road for the past eleven years. Her house has flooded two times in the past five years in 2004 and 2009. Her house is zoned in the flood plan “x”, meaning not a special flood area. However, she received about two feet of water on the bottom level of her house with each flood. The study must go forward or the property values are at stake. The two streets north of Pine Forest, Brookfield and Carolwood, do not have storm drains. The run-off from the two streets have historically been drained to the horse field at the end of the street. Within the past nine years, a house was built at the end of Brookfield on the horse field. The horse field has been used as a floodplain area and collected run-off. We suspect this house has diverted flood water or overflow water to lower Pine Forest Road.

**EXECUTIVE SESSION**

There was no executive session called.

(Agenda Item No. 09-324)

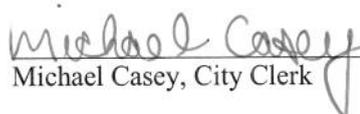
**ADJOURNMENT**

**Motion and Vote:** Councilmember Fries moved to adjourn the Regular Council meeting. Councilmember Jenkins seconded the motion. The motion carried unanimously. The meeting adjourned at 11:08 PM.

Date Approved: April 20, 2010



Eva Galambos, Mayor



Michael Casey, City Clerk